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SUPREME COURT OF THE UNITED STATES.

No. 52.

N. G. PINSON ET AL., PLAINTIFFS IN ERROR,

VERSUS

DAVID IVEY.

IN ERROR TO THE SUPREME COURT OF ERRORS AND APPEALS FOR THE STATE OF TENNESSEE.

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STATE OF TENNESSEE.

At a supreme court of errors and appeals, held for the fourth, fifth, and sixth judicial circuits in said State, at the court-house in the town of Nashville, in the county of Davidson, on the third Monday, being the eighteenth

United States of America, seventh circuit and district of E. Tennessee.

I, William C. Mynatt, clerk of the circuit court of the United States for the seventh circuit and district of East Tennessee, do hereby certify that the foregoing is a true copy of the record of the cause, David Ross's lessee against Charles McClung, so far as is required to be made for this writ of error. And I do also certify, that the bill of exceptions, and the exhibits A, B, and C, therein referred to, are correctly copied from the originals now on file in my office.

Given under my hand and seal of office, at office in Knoxville, this 3d day of December, 1830.

[SEAL.] W. C. MYNATT.

SUPREME COURT OF THE UNITED STATES.

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STATE OF TENNESSEE.

At a supreme court of errors and appeals, held for the fourth, fifth, and sixth judicial circuits in said State, at the court-house in the town of Nashville, in the county of Davidson, on the third Monday, being the eighteenth

day of January, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States the fifty-fourth, present, the honorable Robert Whyte and John Catron, Judges of the supreme court of errors and appeals, and Nicholas P Smith, Esq., now constituted by appointment and commission from the Governor of this State one of the Judges of said court as to the trial or hearing of the following cause, which commission is in the words and figures following, to wit:

State of Tennessee: William Carroll, Governor in and over the same, to all who shall see these presents, greeting:

Whereas it has been duly certified to me that the following causes are now pending in the supreme court of errors and appeals at Nashville, in which a competent court cannot be found of the present members, or in which, from a disagreement of opinion in the court, no decision can be had, to wit: David Ivey against Pinson and Harkins, John Boyd against Thomas Buckingham, Thomas Talbot against James McGavock's lessee, James Winchester's heirs against Alexander Donelson and others; now I, William Carroll, Governor as aforesaid, do hereby commission and appoint Nicholas P. Smith, of our county of Williamson, a special Judge of the supreme court, to hear, adjudicate, and determine said several causes, with such other regular or special Judge or Judges as may be competent thereto, hereby conferring all such powers and authorities in the premises as by law can or may be conferred. In testimony whereof, I have hereunto set my hand and caused the great seal of the State to be affixed, at Nashville, this 9th day of March, 1830.

WM. CARROLL, [SEAL.]

By the Governor,
DANIEL GRAHAM, *Secretary of State.*

I, Nicholas P. Smith, do solemnly swear that I will well and truly do the duties of special Judge of the supreme court of errors and appeals for the State of Tennessee, now sitting at the court house in Nashville, in such special causes wherein I have been appointed Judge. I will not take any reward (except such compensation as may be allowed by law) by myself or any other, for any matter or thing by me to be done by virtue of my office of special judge in such cases which are brought before me to be tried; and in all things belonging to my office of special judge as aforesaid, during my continuance therein, and in the causes assigned to be tried, I will faithfully, truly, and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and individuals; and I also swear that I will support the constitution of the United States and the constitution of the State of Tennessee: so help me God.

NATHAN G. PINSON and DANIEL HARKINS, *appellants*,
vs.
DAVID IVEY, *appellee.*
} *In equity.*

Be it remembered, that heretofore, to wit, on the 17th day of October, 1827, an appeal from the chancery court of the sixth circuit was filed in the office of the clerk of the supreme court of errors and appeals at Nashville, in the words and figures following, to wit:

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STATE OF TENNESSEE.

Be it remembered, that, on the 28th day of September, A. D. 1822, the following bill was filed in the office of the clerk of the chancery court, holden at Columbia, for the sixth circuit of the State aforesaid, viz:

To the honorable the Chancellor of the sixth judicial circuit in the State of Tennessee.

The bill of complaint of David Ivey, a citizen of Davidson county, in the State aforesaid, against Nathan G. Pinson, a citizen of Lincoln county in said State, humbly complaining sheweth unto your honor your orator, the aforesaid David Ivey, that the State of North Carolina has issued to the president and trustees of the university of said State a military warrant for one hundred and fifty-four acres of land, to be laid off within the limits of the land reserved by law for the officers and soldiers of the continental line of said State; which warrant recites that it was for the services of David Ivey, (a balance) a musician in the line aforesaid in the revolutionary war, who died in the service of the United States or since the close of said war without issue or heir, and whose real estate became thereby escheated, and belongs to the president and trustees of the university aforesaid, which warrant is numbered 456, and dated on the 21st day of August, 1820; said warrant has been adjudged valid by the board of commissioners for West Tennessee, and a certificate has also been issued thereon, specifying the number of location, by which the said president and trustees are entitled to make an entry by virtue of said warrant, which certificate is dated on the first Wednesday in November, 1820. Your orator further represents to your honor, that Samuel Dickins, agent for said president and trustees of said university, on the 23d day of December, 1820, by virtue of the power and authority in him vested by said president and trustees of said university, transferred and assigned all the right of said president and trustees of said university to said warrant, to said Nathan G. Pinson, the defendant in this bill. Your orator also states, that, on the 19th day of June, 1821, the said Nathan G. Pinson made an entry founded on said warrant, which entry is numbered six hundred and sixty-two, in the county of Madison and State of Tennessee, of one hundred and fifty-four acres of land situated in the 9th surveyor's district, second range and 7th section, beginning at a hickory, the southeast corner of entry No. 68, for six hundred and forty acres, in the name of the heirs of William Cock; running thence west, with the line of the same, two hundred and twenty-one poles, crossing a small creek to an elm; thence south one hundred eleven and a half poles, to a stake in swamp; thence east ninety-eight poles, and crossed the above creek; thence on east, in all two hundred and twenty-one poles, to a black oak on the west line of Jesse Blackfan's land; thence north, with the same, one hundred eleven and a half poles to the beginning; which entry the said Nathan G. Pinson has caused to be surveyed on the 10th day of December, 1821, and has lodged the plat, certificate of survey, &c., in the register's office for the purpose of obtaining a grant thereon in his own name. Now your orator represents to your honor, that he is the David Ivey spoken of in said warrant, and that it is a mistake about his being dead; that he was a musician in the continental line of N. Carolina, and that no other person of that name, to the best of his knowledge and belief, was, and that he is now entitled to said warrant, never having transferred his right to it in any way. Your orator

further states, that he has always understood that, for his military services aforesaid, he was entitled to a larger warrant than one hundred and fifty-four acres; and what is meant by calling said one hundred and fifty-four acres a balance on the face of said warrant, your orator is at a loss to know, as he never has received any portion of a warrant for his military services or any consideration in lieu thereof; and if any part of the warrant which was due from the said State of North Carolina for his said military services to your orator, has been drawn by any person or corporation, it was a fraud perpetrated against your orator, as he solemnly declares he never has received himself or disposed of it. Your orator states, that he never has made application for said warrant, because it has been many years since he left the State of North Carolina, because he is poor and ignorant, and illiterate, and old, and infirm, and had confidence that the public authorities would, some time or other, do what justice and law required them to do. Your orator states that he is very necessitous, being a pensioner of the United States in consequence of the performance of said military services, and that the said Nathan G. Pinson will obtain a title to said land and deprive your orator of his right thereto, if a grant is suffered to issue for the same; all of which is contrary to equity and good conscience, and tends to the manifest injury of your orator. In consideration whereof, and for as much as your orator is remediless in the premises at common law, and can only have relief in this honorable court, your orator prays that the said Nathan G. Pinson may be made a defendant to this bill, and that your honor will grant the State's most gracious writs of subpœna and injunction, directed, &c., commanding, &c., and that the said Nathan G. Pinson may be compelled, on his corporal oath, full, true, and perfect answer to make to all and singular the premises, in as full and ample a manner as if the same were herein again repeated, and he thereto more particularly interrogated; and that the said Nathan G. Pinson may be enjoined from getting a grant for said land founded on said warrant until the final hearing of this cause, and that the said land may be decreed to your orator; and that other and further decree may be made in the premises as to equity shall seem meet, and the justice of this case requires.

WASHINGTON, *Solicitor.*

September 24, 1822.

This day personally appeared before me, William L. Brown, one of the Judges of the supreme court of errors and appeals for the State of Tennessee, and a Chancellor of said State, David Ivey, the complainant in the above bill, and made oath that the matters and things in said bill, which are stated to be of his own knowledge, are true, and that those which are stated to be from information, he believes to be true.

his
DAVID × IVEY.
mark.

Sworn to before me this 24th September, 1822.

WILLIAM L. BROWN.

To the clerk of the court of chancery for the sixth judicial circuit in the State of Tennessee. Let an injunction issue pursuant to the prayer of the within bill.

WILLIAM L. BROWN,
One of the Judges of the court of errors and appeals.

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We acknowledge ourselves the within named complainant's security in the penalty of three hundred dollars to prosecute this bill with effect, or, in case of failure therein, to pay all costs and damages that may be awarded or decreed against him for such failure therein, to pay all costs and damages that may be awarded or decreed against him.

Witness our hands and seals the 24th day of September, 1822.

T. McGAVOCK, [SEAL.]
J. BLACKFAN, [SEAL.]

Teste, JOHN CARSON.

On the 29th September, 1822, a writ of injunction issued in obedience to the order of the Chancellor, likewise an attested copy of the bill and a subpœna in the usual form; and, on the third day of March, 1823, the defendant, Nathan G. Pinson, filed his answer in the words and figures following, to wit:

The answer of Nathan G. Pinson to the bill of complaint of David Ivey, filed against respondent in the supreme court of equity for the sixth circuit.

This respondent, saving and reserving to himself all exceptions to the many errors in said bill contained, for answer thereto, says, that it is true, as is represented in said bill, that said president and trustees, by Samuel Dickins, their agent, did assign and transfer said warrant, No. 456, for one hundred and fifty-four acres, to this respondent, on the 20th December, 1820, and then delivered the same to him; said Dickins being indebted to respondent for services performed in locating, surveying, and exploring lands for said Dickins and for said president and trustees, assigned said warrant as aforesaid in satisfaction thereof, for a valuable consideration performed and rendered; and respondent at that time had no notice or knowledge of the claim of said complainant, or the claim of any other person to the same. Respondent states that said warrant is located in manner set forth in said bill; that it is located on a very valuable piece or spot of ground, which he has sold to a certain Daniel Harkins, a considerable time before the filing of this bill, or before he had any notice of said claim, for the price of five dollars and thirty cents per acre, and gave him a bond for a title, and has received a part of the price, and has received an assignment of a judgment recovered by said Harkins against Mr. McElvay and John Grant for the residue; said Hawkins is in possession of the land (and has been more than a year past) under said purchase. Respondent states that the price of land on which said warrant is now entered, or so much thereof, was previously entered by respondent by another warrant for one hundred and ten acres; and this warrant being a late number of location, was entered on other land of inferior value, and after some time, to wit, on the 19th June, 1821, he lifted or made void both of said entries, and entered the warrant of one hundred and fifty-four acres where the other had been, including other vacant land adjacent. This was done by defendant for the purpose of holding said good land by the said one hundred and fifty-four acre warrant, which land he has sold as aforesaid! This respondent does not know whether said complainant performed services in the North Carolina line or not, and therefore does not admit the same, and requires strict proof thereof; and he by no means admits that said Ivey is the person for whose services said warrant issued, and requires full and strict proof of all of said allegations. This defendant, however, says that if it should even be the fact that he is the same man who served as a musician and was entitled to a warrant, that said complainant has abandoned his

said claim as to so much of his claim as this warrant issued for, that he for so great a lapse of time neglected to apply for said warrant, that the Legislature of North Carolina, by a tribunal established for that purpose, adjudged that this warrant belonged to said president and trustees, and issued it to them, having legal power and authority to do so; and if said complainant omitted to apply for and obtain his warrant from the secretary of North Carolina, that he is now barred by such his neglect, and by the lapse of time, and by the adjudication of the said board of commissioners, from claiming from said president and trustees or from this defendant, the said warrant, or any thing therefor. But this respondent, further answering, says, if even said complainant should have been injured by the issuance of said warrant, yet he can only have redress for the damages he shall have sustained, to be paid by said president and trustees, and that, by no principle of law, can he claim or be entitled to the said land, innocently and meritoriously secured by virtue thereof by this respondent.

This respondent further insists, by way of defence to said bill, that, by virtue of an act of assembly, passed in the State of Tennessee, on the 14th day of August, 1822, entitled "An act concerning certain lands claimed by the trustees of the University of North Carolina," and by virtue of the proceedings which had taken place under the same, the title to this land, located by virtue of said warrant, is vested in the defendant as assignee of said president and trustees, and that no grant can legally, or ought to issue to said complainant or any other person. This defendant also states, by way of defence, that said complainant, from his own shewing, and so the truth is, would never have *applied* for or obtained said warrant; that the same was issued by the secretary of North Carolina to the said president and trustees, at their expense, by virtue of the laws of that State, and that this complainant has no equitable lien on the same; that if he is entitled to a warrant from said State, the issuance of this warrant will in no manner deprive him from obtaining the same if he should apply for it.

This defendant, for further defence, states and charges the fact to be, that this recovery is not intended for the use and benefit of complainant, but he charges that it is for the benefit of Francis McGavock, and perhaps some others, who have pretended to purchase the same for a feigned consideration after your respondent has entered the same, and after said Harkins had purchased and obtained possession thereof under respondent, and so respondent insists the said sale, and the said suit so prosecuted, are utterly void and of no effect, and that this court will not exercise their jurisdiction to enforce any decree against this defendant; and this defendant doth rely on all of said matters by way of defence to this suit, and in bar of any decree for the land entered and secured by this defendant by virtue of said warrant.

This respondent also insists, that, if on all these points he should be mistaken, and if any decree should be made for any of said land, that this respondent is entitled, out of said land, to retain so much as will pay for all the trouble, expense, care, &c., of applying for and obtaining said warrant; also for filing the same for adjudication, paying fees for locating and surveying the same, which he believes, under the circumstances of this case, would be two thirds of said land. But this respondent insists, that this court ought not to make any decree in this cause, and therefore he insists to be hence dismissed with his costs, and he will ever pray.

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STATE OF TENNESSEE, DAVIDSON COUNTY.

This day appeared before the subscriber, a justice of the peace for said county, Nathan G. Pinson, and, being duly sworn, saith, that the facts stated in the foregoing answer, and stated of his own knowledge, are true, and those stated from information, he believes to be true.

NATHAN G. PINSON.

Sworn to and subscribed before me, this 1st March, 1823.

J. WHARTON,
Justice of the peace for Davidson county.

March term, 1823, *the Honorable William L. Brown presiding.*

IVEY *vs.* PINSAN.

Whereas it is suggested to the court by complainant's attorney, that it is necessary for the interest of complainant that the bill filed in this cause should be amended, it is therefore ordered that complainant have leave to file his amended bill.

The amended bill of David Ivey against Nathan G. Pinson.

Your orator alleges that he has, on this 4th day of March, 1823, for the first time, discovered that a certain Daniel Harkins is in possession of, or in some way claims title to, the land in controversy; which discovery has been made from the answer of Nathan G. Pinson to defendant to the original bill filed in this cause. Your orator prays that the said Daniel Harkins, who, he is informed, lives in the county of Madison in said State, where said land lies, may be made a defendant in this cause, and may be served with a copy of this bill and the one to which it is an amendment, and that your honor will grant a subpœna and injunction, &c., directed and commanding, &c., as against the said Daniel Harkins, and that he may be compelled on his corporal oath, full, true, and perfect answer to make, to all and singular the allegations in both bills, in as ample a manner as if the same were herein again repeated, and he thereto more particularly interrogated; and that he may set forth, on oath, whether he is in possession of said land, and how and by what authority he is in possession of it, and whether he has purchased the same, and the exact time of doing so; and, if he has, whether he had no notice, information, suspicion, or belief, of your orator's title thereto at the time he purchased, and whether he has paid for said land, and how much he has paid and agreed to pay, and whether his purchase was not a conditional one, and what was his bargain, fully and circumstantially, and whether he is able to comply with his said bargain independently of the aid which he may derive from holding said land. And your orator prays that, by a final decree in this cause, the title to said land may be vested in your orator, and that such other and further relief may be granted in the premises as to equity shall seem meet, and the justice of this case requires.

WASHINGTON, *Solicitor.*

A copy of the original and amended bill, with a subpœna in the usual form, for defendant Harkins, issued on the 15th September, 1823; and, on the 7th of February, 1824, said Harkins filed his answer in the words and figures following, viz:

The answer of Daniel Harkins to the bill of complaint filed in the court of equity, at Columbia, by David Ivey, against this defendant and Nathan G. Pinson.

This respondent, saving to himself all advantage of exception to the many errors and untruths in said bill contained, for answer to so much thereof as he is advised is material for him to answer unto, answereth and saith, that as to the right of said Nathan G. Pinson, or of the said president and trustees to said warrant, or to the land entered thereby, he knows nothing of his own knowledge; but, on this part of the subject, he refers to the answer of Nathan G. Pinson as his answer, and relies on the same, so far as it is material for his defence, as his answer. This defendant says that he purchased from said Nathan G. Pinson, the land described in said bill, on which the said warrant is located, on or about the 10th day of October, 1821, and took said Pinson's bond for a title, and contracted to pay the sum of five dollars and thirty cents per acre for the same, of which he paid in cash the sum of three hundred dollars, and assigned a judgment, &c , which he had against Wm. McElvay, John Greer, and others, for the residue, and received a bond for a title from said Pinson, which he will produce to your honor. He took possession of said land, and has retained the same ever since, and has built houses and other necessary buildings of the value of seventy-five dollars, and has cleared about twenty-two acres, which is of the value of one hundred and ten dollars. This defendant purchased said land and paid said Pinson for the same, took possession, and has made said improvements, without any knowledge or notice of any other title or claim, and without having heard that there was any such person as complainant, or of his claim; and he insists that he is a bona fide purchaser for a valuable consideration, without any notice of plaintiff's claim, and insists on the benefit of the same in his defence, in addition to the matters set forth in the answer of his co-defendant Pinson. This defendant insists, that if this honorable court should decide contrary to his expectation, that said land or any part thereof should be recovered from this defendant, that he may be entitled to have decreed to him the full value of all the improvements made by him on said land. This defendant prays the said bill to be dismissed, and that he may go hence with his costs, &c.

GRUNDY & TREMBLE.

STATE OF TENNESSEE, MADISON COUNTY.

This day appeared the above named Daniel Harkins before the subscriber, a justice of the peace for said county, and, being duly sworn, saith, that the facts stated in the above answer, so far as they are stated of his own knowledge, are true, and those stated from information, he believes to be true.

his
DANL. + HARKINS.
mark.

Sworn to before me, this 17th day of January, 1824.

WILLIAM C. LOVE, *J. P.*

General replication to the answers of both defendants, March 6, 1824.

March rules, 1825, ordered by the clerk and master, under the rule of court, that the complainant, in taking depositions, give the necessary notice to Nathan G. Pinson, and that such notice shall be sufficient.

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August rules, 1825, set for hearing upon bill, amended bill, answers, replications, and testimony.

September term, 1825, the honorable Jacob Peck presiding.

DAVID IVEY *vs.* NATHAN G. PINSON and DANIEL HARKINS.

On this 8th day of September, 1825, the above cause came on to be heard before the honorable Jacob Peck, setting as Chancellor for the sixth circuit of the State of Tennessee, upon bills, answers, replications, and proof; and it appearing to the court that David Ivey, the complainant, is the person for whose military services the warrant in the bill mentioned was issued; it also appearing to the court, that said warrant recites upon its face that it was issued in consideration of the military services of David Ivey, alleged to be dead without heirs, and that the property of the warrant has escheated, but who the court is satisfied is the complainant; it also appearing to the court, that the University of North Carolina, by its agent, Samuel Dickins, transferred said warrant by written endorsement thereon, as far as he or the said University was capable of transferring the same, to Nathan G. Pinson, on the day of December, 1820, and that the said warrant is not embraced by, or mentioned in, the compact between Tennessee and the University of North Carolina, formed in 1822; it also appearing to the court, that the University of North Carolina has not now any property in said warrant, nor has not had, nor pretended to have, since the assignment thereof by Samuel Dickins; it also appearing to the court, that said warrant was located upon the tract of land specified in the bill, and the entry and survey made in the name of Nathan G. Pinson; and it also appearing to the court, that said Nathan G. Pinson has sold said tract of land to Daniel Harkins, but not conveyed the same by deed, and that Daniel Harkins is in possession of the same, and that some improvements have been made thereon: but it not appearing to the court at whose expense said warrant was adjudicated or located, nor what would be the reasonable expenses thereof; and it not appearing to the court, what is the value of said improvements, nor what the value of land warrants was at the time of the conversion of the warrant in the bill mentioned by N. G. Pinson, the court doth see fit to make an interlocutory decree in this case, and doth order, adjudge, and decree accordingly, that the clerk and master shall ascertain and report to the next term of this court:—

1st. What were the usual and customary rates of locating land on the shares in that part of the country where the land in question lies, at the time when the same was located?

2d. What fees have been advanced upon this warrant either in the adjudication or location of the same, and by whom?

3d. What is the present value of the improvements made upon said land, at what time they were made, and by whom; what portion of them was made before the filing of this bill, and what since; what was their value when made, and who has been in the occupation of said land since the same was entered, and what has been the annual value of the rent thereof?

4th. What was the value of land warrants of the size of this one when it was assigned to Nathan G. Pinson, and at the time of locating it, and at the time of filing this bill?

It is further ordered, adjudged, and decreed, that all other matters in this cause be reserved till the coming in of said report.

March term, 1826, *the honorable John Catron presiding.*

DAVID IVEY *vs.* N. G. PINSON and D. HARKINS.

This day, (March 7th, 1826,) the clerk and master exhibited his report, made in pursuance to an order made in this cause at the last term of the court, which is ordered to be received and entered upon the minutes of the court; said report is in the following words, to wit:

State of Tennessee, chancery court, sixth circuit, March term, 1826.

Whereas certain matters of fact arising in the case of David Ivey against Nathan G. Pinson and Daniel Harkins, were, by an interlocutory order of the court aforesaid, referred to the clerk and master thereof, to be inquired into and reported of at the present term of this court, which said matters will appear at large in said order, reference being had thereto. And whereas I, Madison Carothers, clerk and master of said court, did, in pursuance to said order, on the 11th February, 1826, proceed to collect such testimony in relation to said facts as could be procured, do now respectfully report, as the result of my examination aforesaid, that, at the time the location in question was made, the customary rates of locating lands on the shares where the same was made, was about one-fifth of the amount of the warrant located, and that the fees for adjudication were one cent for every acre, and the fee for making an entry and procuring a copy thereof was seventy-five cents; and, moreover, that the price or value of warrants of the size of the one in question, was about two dollars per acre at the time of its assignment to Nathan G. Pinson, at the time of locating said warrant, and likewise at the time of filing this bill. With respect to the other subjects of inquiry embraced in said order, no information has been obtained for want of testimony. It is further ordered by the court, that the cause aforesaid be continued until the next term of this court.

The foregoing report was received by the Chancellor now presiding, by consent of the parties respectively concerned in the cause.

September term, 1826, cause continued.

March term, 1827, *the honorable Jacob Peck presiding.*

DAVID IVEY *vs.* NATHAN G. PINSON and DANIEL HARKINS.

The above cause coming on to be finally heard before the honorable Jacob Peck, presiding as Chancellor for the sixth judicial circuit in the State of Tennessee, upon bills, answers, replications, and proofs; and it appearing to the court that David Ivey, the complainant, is the person for whose military services the warrant in the bill mentioned was issued; it also appearing to the court, that said warrant recites upon its face that it was issued in consideration of the military services of David Ivey, alleged to be dead without heirs, and that the property of the warrant has escheated, but who the court is satisfied is the complainant; it also appearing to the court, that the University of North Carolina, by its agent, Samuel Dickins, transferred said warrant by written endorsement thereon, as far as he or the University was capable of transferring the same, to Nathan G. Pinson, on the day of December, 1820, and that the said warrant is not embraced by, or mentioned in, the compact between Tennessee and the University of North Caro-

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lina, formed in 1822; it also appearing to the court, that the University of North Carolina has not now any property in said warrant, nor has not had, nor pretended to have, since said assignment thereof by said Samuel Dickins; it also appearing to the court, that said warrant has been located upon the tract of land specified in the bill of complaint, and that the entry and survey thereof have been made in the name of Nathan G. Pinson; and it also appearing to the court, that said Nathan G. Pinson has sold said tract of land to Daniel Harkins, but that he has not conveyed the same by deed; it also appearing to the court, that no grant has issued for said tract of land; it also appearing to the court, that land warrants are not the subjects of escheat, and, if they were, the proper steps have not been pursued by North Carolina, in the case of this warrant, to ascertain and declare it escheated; and it also appearing to the court, that the State of North Carolina had no authority, under any of the provisions of the act ceding her western territory to the United States, or under any compact between North Carolina and the United States, or under any compact between the States of North Carolina and Tennessee, or under any compact between the United States and Tennessee, to issue this warrant to the president and trustees of the University of North Carolina; and it also appearing to the court, from the report of the clerk and master, made in pursuance of an interlocutory decree heretofore made in this cause, that, at the time when this warrant was located in the part of the country where it was located, the customary rates of locating lands on the shares was one-fifty of the quantity located, and that the lawful fees for adjudicating land warrants at the time when this was located was one cent per acre, and that the fee for making an entry and procuring a copy thereof was seventy-five cents, and that said warrant was located by the said Nathan G. Pinson, and said fees for the adjudication of the warrant and for making the entry, were paid by the said Nathan G. Pinson: It is therefore finally ordered, adjudged, and decreed, that the said Nathan G. Pinson be perpetually enjoined from obtaining a grant for said land upon which said warrant has been located, that the title already acquired by the entry and survey be divested out of said Nathan G. Pinson, and vested in the said David Ivey, and that a grant issue to the said David Ivey to said land, according to the plat and certificate of survey returned by the said Nathan G. Pinson to the register's office, as recited in the bill of complaint. It is further ordered, adjudged and decreed, that the said David Ivey shall, within six months from the date of the grant which may issue to him for said land, convey to the said Nathan G. Pinson, by quit claim deed, one-fifth part of said tract of land, proportional in quality, as a compensation for his locating services; and Robert Hughes and James Carothers, of Madison county, are appointed commissioners, under the authority of this court, to lay off said fifth of said tract. It is also ordered, adjudged and decreed, that the said David Ivey pay, within six months from this date, to the said Nathan G. Pinson, at the rate of one cent per acre for said land, as remuneration for expenses by him, the said Nathan G. Pinson, incurred in the adjudication of said warrant, together with legal interest thereon from the time said expenses were paid by the said Nathan G. Pinson; and that he also pay to the said Nathan G. Pinson, the further sum of seventy-five cents, with interest thereon from the date of the entry, as a remuneration for the entry taker's fee paid by said Pinson. It is further ordered, adjudged and decreed, that the said Nathan G. Pinson

pay all the costs of this cause, except that part relating to said Daniel Harkins, and that said Daniel Harkins pay that portion of the costs.

DAVID IVEY, *complainant, vs.* NATHAN G. PINSON, &c.

This day (March 7th, 1827,) came the defendants, and, by their attorney, prayed an appeal from the judgment and decree entered up in this cause on this day, to the supreme court held at Nashville, which is granted them. Whereupon they executed bond, with Lucius J. Polk as their security, in the penal sum of two hundred and fifty dollars, conditioned according to law.

Know all men by these presents, that we, N. G. Pinson and D. Harkins, and Lucius J. Polk, are held and firmly bound unto David Ivey in the sum of two hundred and fifty dollars, to be paid to the said David Ivey, his heirs, administrators, executors, or assigns, for the payment of which, well and truly to be made and done, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents. Witness our hands and seals this 7th day of March, 1827. The condition of the above obligation is such, that whereas the above bound Pinson and Harkins have this day prayed for and obtained an appeal to the honorable the court of errors and appeals, to be holden in the town of Nashville, at the court-house, on the first Monday in January next, in the case wherein David Ivey obtained a decree of the court of chancery for the sixth circuit against them, &c.; now, if the said Pinson and Harkins shall well and truly prosecute their appeal with effect, or, in case of failure thereof, shall satisfy and pay all costs and damages incident on failure thereof, then the above obligation to be void, else to be and remain in full force and virtue.

N. G. PINSON, [L. S.]
DANL. HARKINS, [L. S.]
By Lucius J. Polk, their Agent.
LUCIUS J. POLK, [L. S.]

Bill of costs.

Clerks fees enrolling bill, $1 50, affidavit, bond, and two securities, 70, copy bill, subpœna, and injunction, 4 25, motion and order for amended bill, 50, enrolling amended bill, 2 00, subpœna for Harkins, 1 25, Pinson's answer and affidavit, 1 75, Harkin's answer and affidavit, 87½, 2 replications and 2 rules, 70, 2 commissions, 1 00, 2 copies of rules of court for depositions, 1 25, 2 copies interrogatories, 1 00, drawing and enrolling order, 1 00, master's report, 40, enrolling report, 31¼, 2 continuances, 50, drawing and enrolling final decree, 2 50, motion and order for appeal, 50, appeal bond, 35, taxing costs, 40, transcript, certificate and seal, 8,50. $31 73¾

State tax	2 50
Attorneys fee	12 50
Sheriff's	1 20
Justices	1 20
	$49 13¾

STATE OF TENNESSEE.

I, Madison Carothers, clerk and master of the court of chancery for the sixth circuit court of the State of Tennessee, certify, that the foregoing is a true and perfect transcript from the records of my office, of all the proceedings had in said court in the case of David Ivey *vs.* Nathan G. Pinson and

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Daniel Harkins, now of record in said office. In testimony whereof, I have hereunto subscribed my name, and, having no seal of office, have affixed my private seal, at office in Columbia, this 20th day of September, A. D. 1827, and 52d of American independence.

[L. S.] M. CAROTHERS, *C. & M. C. C.*

And now, to wit, at January term, 1828, of said supreme court of errors and appeals, the following order was made in said cause, to wit:

By consent of the parties aforesaid, by their counsel, Judge Catron, who was employed as counsel in said cause, is to set on the trial of the same in this court.

And said cause was continued in said supreme court, until the term first above mentioned, at which term the following decree, &c., was entered, to wit:

NATHAN G. PINSON and DANIEL HARKINS, *appellants*,
vs.
DAVID IVEY, *appellee*. } *Decree.*

This 27th day of May, 1830, this cause came on for a final decree, in the presence of counsel, as well for complainant as for defendants, before the honorable Judge Catron and Robert Whyte, Judges of the court of errors and appeals, as well as before Nicholas P. Smith, Esq., now constituted by appointment and commission from the *Government* of this State, one of the Judges of said court, as to the trial or hearing of this cause, in pursuance of the laws of said State, upon bill, answer, replication, and the proofs adduced on the part of the complainant, the defendants having introduced no proofs, to wit, the complainant gave in evidence a land warrant, as follows:

Duplicate. The State of North Carolina, No. 456, William Hill, Secretary of State. To the surveyor of military lands, greeting: Pursuant to an order of the board of commissioners, appointed by an act of the last General Assembly of this State, entitled an act concerning military land warrants, you are hereby required, as soon as may be, to lay off and survey one hundred and fifty-four acres of land for the use and benefit of the president and trustees of the University of the State aforesaid, for the time being, within the limits of the lands reserved by law for the officers and soldiers of the continental line of said State; it being for the services of David Ivey, (a balance,) a musician of the line aforesaid in the revolutionary war, who died in the service of the United States or since the close of the war, without issue or heirs, and whose real estate thereby became escheated, and belong to the president and trustees of the university aforesaid,) observing the directions of the acts of assembly in such case made and provided for running out lands; two just and fair plans thereof, with a certificate to each annexed, you are to transmit to the proper office within the time limited by law. Given under my hand at office in Raleigh, the 21st day of Aug A. D. 1820.

WILLIAM HILL.

NASHVILLE, 2*d October*, 1820.

A. FOSTER,
President of the Board of Commissioners for West Tennessee.

Attest, J. BLACKFAN, *Clerk.*

Register's office of West Tennessee. This is to certify that the above is a copy.

Attest, F. McGAVOCK, *D. R. of W. Tenn.*

By virtue of the power and authority in me vested by the president and trustees of the University of North Carolina, I do hereby transfer their right to the within warrant unto Nathan G. Pinson, for value received, this 23d December, 1820.

SAMUEL DICKINS, *Agent.*

A copy of the assignment thereon. Attest,

F. McGAVOCK,
D. Reg. of West Tennessee.

Which warrant had been adjudged valid by the board of commissioners of West Tennessee.

He also read the deposition of John McCallester, as follows:

In pursuance of the enclosed commission, to me directed, from the court of chancery for the sixth circuit, at Columbia, in the State of Tennessee, I have caused to come before me, at the court-house in the county of Todd, and State of Kentucky, on the 22d day of June, 1825, John McCallester, aged about sixty-seven years, a witness in a certain matter of controversy now depending in said court of chancery between David Ivey, complainant, and Nathan G. Pinson and Daniel Harkins, defendants, who, being first duly sworn upon the Holy Evangelists of Almighty God, deposeth and saith:

First question by the complainant. Are you acquainted with David Ivey, of Davidson county, Tennessee?

Answer. I am.

2d. Q. by same. How long have you known him?

A. I first became acquainted with him in the year 1777, whilst we was in the army of the tenth regiment of the North Carolina continental line.

3d. Q. by same. At what time did he enlist, and under whom?

A. I think he enlisted in the fall of 1777; I do not now recollect whom he enlisted under, but he was attached to Captain James Wilson's company.

4th. Q. by same. What service did he perform, that is, what battles was he in, and what marches or campaigns did he make?

A. We rendezvoused at a place called *Ladies* Hall, in Halifax county, North Carolina; from thence we marched to Richmond, in the State of Virginia, and there halted for some time; from thence to Georgetown, which is now the District of Columbia, where we halted for some time, and was there inoculated for the small pox; the most of the army from thence, in the year 1778, were marched to Valley Forge, in the State of Pennsyluania, where we halted for some time: from thence we marched to Monmouth, in the State of New Jersey, where we fought the battle of Monmouth; from thence we marched to a place called the White Plains, in the State of New York, where the army continued until late in the fall, where I was discharged; and during the whole of the above campaign, David Ivey was in the army as a regular soldier.

5th. Q. by same. Did he enlist or serve as a musician or drummer?

A. When he first entered the army, he did perform duty as a musician for some time, and afterwards was transferred to the wagon department.

6th. Q. by same. Did he serve till the end of the war, and for what time did he enlist?

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A. I think he enlisted for three years or during the war, and I have no doubt but that he served during the war.

8th. Q. by same. How far did you live from him in North Carolina before and after the war, and how long did you live thus near?

A. I lived about twelve miles from him before the war, and for two years after the war was over. I then moved about one hundred miles from him, where I remained until about twelve years ago, when I removed to the western country.

7th. Q. Did you know him after the termination of the war, and where?

A. I did know him after the termination of the war, in Orange county, North Carolina, where he lived.

9th. Q. by same. Where did the said David Ivey move to from North Carolina, and when?

A. He moved to the western country, and I was at his house about five years ago, in Dickson county, in the State of Tennessee, which was the first time of my knowing of his removal from North Carolina.

10th. Q. by same. Were you living near him when he moved?

A. I do not know whether Mr. Ivey or myself moved first from North Carolina.

11th. Q. by same. Have you seen the said David Ivey since he moved to Tennessee, and how often?

A. I have seen him at his house, and but once.

12th. Q. by same. How long after his removal from North Carolina, before you saw him in Tennessee?

A. I do not know when he moved from North Carolina.

13th. Q. by same. Do you know him to be the same David Ivey that served in the North Carolina line?

A. I do know him to be the same.

14th. Q. by same. Did you know of any other David Ivey that served in the North Carolina line?

A. I did not know of any other David Ivey.

15th. Q. by same. Is not the said David Ivey a very weak minded and ignorant man? State what you think of his mind and information, and capacity for business.

A. I always considered him a very weak minded and ignorant man.

16th. Q. by same. Do you know whether he ever drew any warrant or part of warrant for his military services?

A. I do not know.

17th. Q. by same. Is not the said David Ivey a revolutionary pensioner of the United States?

A. I have understood that he is.

Q. by same. Please to state any thing more you know on the subject?

A. I do not now recollect any thing more that is of any consequence, and further this deponent saith not.

JOHN McCALLESTER.

STATE OF KENTUCKY, TODD COUNTY, to wit:

The foregoing deposition of John McCallester was this day taken, subscribed, and sworn to, by said John McCallester, before the undersigned, a justice of the peace for said county, at the time and place and for the purposes stated in the caption thereof.

Given under my hand and seal, this 22d day of June, 1825.

[L. S.] BEN. P. MULLIN, *J. P. D. C.*

He also read the deposition of David Passmore, as follows:

DAVID IVEY *vs.* NATHAN G. PINSON and DANIEL HARKINS.

In pursuance to the enclosed commission, to me directed, from the court of chancery for the sixth circuit, at Columbia, in the State of Tennesse, I have caused to come before me, at the house of John Read, in the town of Charlotte, county of Dickson, State of Tennessee, on the 27th day of November, at the hour of ten o'clock of the forenoon of the same day, David Passmore, of the age of about sixty-five years, a witness in a certain matter of controversy now depending in the said court of chaneery between David Ivey, complainant, and Nathan G. Pinson and David Harkins, defendants, who, the said David Passmore, being first duly sworn upon the Holy Evangelists of Almighty God, deposeth and answereth as follows, to wit:

Interrogatories by the complainant. 1st. Are you acquainted with David Ivey, of Davidson county, Tennessee?

Answer by the deponent. I am well acquainted with him.

2d. How long have you known him?

A. by the deponent. Ever since August, 1777.

3d. Where did you first became acquainted with him?

A. by deponent. David Ivey the aforesaid, and myself, both enlisted as private soldiers in capt. James Wilson's company, in August, 1777, in Orange county, North Carolina; it was then and there I first became acquainted with him.

4th. Did the said David Ivey serve as a soldier in the revolutionary war?

A. by the deponent. He did.

5th. Did he serve in the North Carolina continental line?

A. by the deponent. He did.

6th. At what time did he enlist, and under whom?

A. by the deponent. In August, 1777, in capt. James Wilson's company, as before answered; it was then we rendezvoused, and about that time, perhaps a few days before the rendezvous, said David Ivey enlisted.

7th. What regiment did he belong to?

A. by the deponent. He enlisted in the 10th regiment, and marched on to the east to Valley Forge, where the regiments were reduced, and he fell into the first or second regiment, I forget which; the first regiment into which this deponent fell, was commanded by col. Thomas Clark, and he believes that David Ivey, the aforesaid, fell into the same regiment; the second regiment was commanded by col. Patton.

8th. What service did he perform, that is, what battles was he in, and what marches or campaigns did he make?

A. by deponent. I forget whether he was in any battle; first he was a drummer, which, as well as I recollect, he continued about a year or something less; then, as well as I recollect, he was an artificer, and, if my memory serves me rightly, he was then made wagoner. We continued in the same brigade for about two years and six months after the reduction of the regiments; the brigade consisted of but two regiments, the first and second, which was under the command of General Hogan, during which term of two years and six months there was but one general engagement in which the brigade aforesaid participated, which was the battle of Monmouth. I

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was in that battle, and, as well as I remember, the aforesaid David Ivey was about that time absent in the service incident to the charge of a wagon or artificer.

9th. Did he enlist or serve as a musician or drummer?

A. by the deponent. He served as a drummer, as before stated; but whether he enlisted as such or as a common private, this deponent cannot say; but he served as a drummer immediately after his enlistment, and continued to serve as such, as I have already answered above.

10th. Did he serve till the end of the war, and for what time did he enlist?

A. by the deponent. He enlisted for three years; we served together, that is, in the same brigade, for about two years and six months, when, at the siege of Charleston, South Carolina, I was taken prisoner, and saw nothing more of said David Ivey until after the termination of the war. Immediately after the termination of the war in the year 1783 or 1784, we lived in the same neighborhood, about four miles or something less; about that period, 83 or 84, he told me that he served throughout the war; that after his time (the three years aforesaid) had expired, he enlisted in the service (continental) again, but I do not recollect whether in the same brigade or not. We lived neighbors as aforesaid (after the termination of the war) about twenty years, during all of which I was well and intimately acquainted with him.

11th. Did you serve with him throughout the whole period of his service, or for what portion of it?

A. by the deponent. The deponent says, to this interrogatory, he refers to what he has already answered.

12th. Did you know him after the termination of the war, and when?

A. by the deponent. I knew him and lived neighbor to him, as before stated, in North Carolina, for about twenty years, when I moved out in this (the western) country, since when I have frequently seen him in North Carolina during my visits into that country, before he moved out into this country. I have frequently seen him in this State; have staid all night at his house several times, on the waters of Harpeth river, in Davidson county, where he now lives, or did a few days ago; and I know him to be the same David Ivey who served with me in the revolutionary war, and of whom I have been speaking.

13th. How far did you live from him in North Carolina after the war, and before the war, and how long did you live thus near?

A. by the deponent. I have already stated how far and how long I lived by him after the war; before the war, I knew him not?

14th. Where did the said David Ivey move to from N. Carolina, and when did he move?

A. by the deponent. The first place of residence of his, after he moved from North Carolina, of which I have any knowledge, is on the waters of Harpeth, in Davidson county, near where he now lives.

15th. Were you living near him when he moved?

A. by deponent. No, I moved first.

16th. Have you seen the said David Ivey since he came to Tennessee, and how often?

A. by the deponent. Frequently, but how often I dont recollect.

17th. Where did you last see him?

A. by the deponent. At my own house, in Dickson county.

18th. How long after his removal from North Carolina before you saw him in Tennessee?

A. by deponent. About four or five years.

19th. Did you know him to be the same David Ivey that served in the North Carolina line?

A. by deponent. I did, the very same man.

20th. Did you know of any other David Ivey who served in the North Carolina line?

A. by the deponent. I never did.

21st. Is not the said David Ivey a very weak minded and ignorant man? State what you think of his mind and information, and capacity for business.

A. by the deponent. I think he is a very ignorant, weak-minded man, and very unfit for business; this was always my opinion of him; he used to gamble, and was apt to be imposed upon, and cheated out of what little he made, by which means he was always kept very poor.

22d. Do you know whether he ever drew any warrant, or portion of warrant, for his military services?

A. by the deponent. I do not.

23d. Is not the said David Ivey a revolutionary pensioner of the United States?

A. by the deponent. Myself and a man by the name of John McCallester, who lives, as I believe, in Kentucky, were called upon some years ago to establish some facts relative to the services rendered by said Ivey in the revolutionary war, and for the purpose of identifying him, in order that he might be placed on the pension list, which we did; and I am informed that he was placed on the pension list of the United States, and now draws a pension.

24th. Please state any thing more you may know on this subject?

A. by deponent. I recollect, at this time, nothing more than what I have already stated. And further this deponent saith not; and hath hereunto fixed his hand in confirmation of his oath aforesaid, this 27th day of November, 1824.

DAVID PASSMORE.

I, John Read, the commissioner appointed by, and in virtue of a commission to me directed from the court of chancery for the sixth circuit, in the State of Tennessee, bearing date the 25th day of October, 1824, do hereby certify that I have, on the day of the date hereof, caused David Passmore, whose deposition is above written, to come before me, at the time and place mentioned in the caption thereof, and him, the said David Passmore, have examined on the part of the complainant, in a certain matter of controversy depending in said court, wherein David Ivey is complainant, and Nathan G. Pinson and Daniel Harkins are defendants; first swearing him, the said David, on the Holy Evangelists true answers to make touching the interrogatories which should be propounded to him in that behalf; and, when the same was concluded, it was carefully read over to him, and by him subscribed in my presence; neither of the parties were present or appeared during the day, nor were there any other persons present. In witness whereof, I have hereunto set my hand and seal, this 27th day of November, 1824.

JOHN READ, [L. S.]

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Whereupon a majority of the court (Judge Catron dissenting) were of opinion, that, by virtue of the statutes of North Carolina and the acts of Congress of 1789, c. 47, 1806, c. 31, and 1818, c. 33, and the statutes of Tennessee, the complainant Ivey was entitled to a decree in his favor, and proceeded to decree as follows:

That David Ivey, the appellee, is entitled to the land warrant described in the pleadings in this cause, and the entry and survey founded thereon, and to the land covered thereby, and doth order, adjudge and decree, that all the right, title, and interest of the said Nathan G. Pinson and Daniel Harkins be divested, and vested in the said David Ivey, his heirs and assigns for ever. This court doth further order, adjudge and decree, that the said Nathan G. Pinson shall, within three months from this day, being the 27th of May, 1830, assign the plat and certificate of survey filed in the register's office at Nashville, to the said David Ivey, his heirs and assigns, having the same attested according to the provisions of the second section of the act of the General Assembly of the State of Tennessee, passed at April sessions 1809, being chapter thirteen of the acts of said session; that is to say, he, the said Nathan G. Pinson, shall make said assignment to the said David Ivey, his heirs and assigns, on the said plat and certificate of survey, as filed in said register's office at Nashville, and have the same attested by two witnesses, one of whom shall be said register himself, in whose office said plat and certificate of survey are filed. It is further ordered, adjudged and decreed, that the said Nathan G. Pinson and Daniel Harkins deliver possession of said tract of land to the said David Ivey, his heirs and assigns, within five months from this day. It is further ordered, adjudged and decreed, that the decree of the Chancellor in this cause, and the facts and legal conclusions therein stated, be, in all other respects, adapted and affirmed as the decree of this court, and that the appellants, Nathan G. Pinson and Daniel Harkins pay the costs of this appeal. From the foregoing decision and decree, the appellants, Nathan G. Pinson and Daniel Harkins, by their counsel, pray a writ of error to the Supreme Court of the United States, which is allowed them, they having given bond and security as required by law. And, in case a writ of error should not be considered by the Supreme Court of the United States as the proper mode of proceeding in this case, an appeal is also prayed, both of which are allowed by the court; and the counsel on both sides, now present, dispense with any citation or notice.

It is further ordered, that the execution of the decree be suspended until the further order of this court.

Which bond is in the words and figures following, to wit:

Know all men by these presents, that we, Nathan G. Pinson, Daniel Harkins, and John Overton, are held and firmly bound unto David Ivey, in the full and just sum of five hundred dollars, to be paid to the said David Ivey, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 27th day of May, 1830.

The condition of the above obligation is such, that whereas, lately, in the supreme court of errors and appeals, at Nashville, in the State of Tennessee, in a suit depending in said court wherein the said Nathan G. Pinson and Daniel Harkins were appellants, and the said David Ivey appellee, a

decree was rendered against the said appellants in favor of the said David Ivey; and the said appellants having obtained a writ of error from the Supreme Court of the United States, and having filed a copy thereof in the clerk's office of this court, to reverse the judgment in the aforesaid suit, and the counsel having dispensed with any citation or notice to appear at the Supreme Court of the United States, to be holden at Washington, on the third Monday in January next: Now, if the said Nathan G. Pinson and Daniel Harkins, the said appellants, shall prosecute their said writ with effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN OVERTON, [L. S.]
NATHAN G. PINSON, [L. S.]
DANIEL HARKINS, [L. S.]
By their agent, Samuel Dickins.

Sealed and delivered in presence of

Bill of costs.

Supreme court costs, viz: State tax, - - - -	$2 50
Clerk's fees, appeal, 1 60, 2 continuances, 50, drawing decree, 5 75, enrolling same, 5 75, 3 orders, 75, appeal bond, 50, enrolling bill, answers, &c., 8 50, transcript, 15 50, certificate and seal, 75, taxing costs of chancery court, 1 25, taxing costs of supreme court, 1 25,	42 10
Attorney, Washington, - - - - -	12,50
Chancery court, costs, - - - - -	49,13
	$126 23¾

STATE OF TENNESSEE, *ss.*

I, Randal McGavock, clerk of the supreme court of errors and appeals, at Nashville, in said State, do hereby certify, that the foregoing is a true transcript of the record of said court, in the suit Nathan G. Pinson and Daniel Harkins, appellants, against David Ivey, appellee. In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at office in Nashville, this 29th day of May, in the year of our Lord, 1830.

[L. S.] R. McGAVOCK.

THE

UNITED STATES OF AMERICA,

District of Maryland, to wit:

AT a Circuit Court of the United States, for the Fourth Circuit, in and for the Maryland District, begun and held at the city of Baltimore on the 8th day of December, 1829.

PRESENT THE HONOURABLE
GABRIEL DUVALL, *one of the Associate Justices of the Supreme Court of the United States.*
ELIAS GLENN, *Judge of Maryland District.*
NATH'L WILLIAMS, Esq. *Attorney.*
THOMAS FINLEY, Esq. *Marshal.*
PHILIP MOORE, *Clerk.*

Among other, were the following proceedings, to wit:

THE UNITED STATES OF AMERICA,
vs.
The President and Directors of the Elkton Bank of Maryland.

Be it remembered that heretofore, to wit: on the 24th day of October, 1828, the said United States of America, by Nathaniel Williams, Attorney of the United States, for the Maryland District, prosecuted and sued forth out of the Circuit Court here, the writ of the United States of America, of Capias ad Respondendum, directed to the Marshal of the Maryland District, in the words and of the tenor following, to wit:

WRIT.

THE UNITED STATES OF AMERICA.

Maryland District, to wit:

To the Marshal for Maryland District, Greeting:

We command you that you summon the Pre-
[L. S.] sident and Directors of the Elkton Bank of Maryland, if they shall be found in your District, and that them so taken, you safe keep, so that you have their bodies before the Judges of the Circuit Court of the United States, for the fourth circuit, in and for the Maryland district, at the United States court room, in the city of Baltimore, on the 8th day of December next, to answer unto the United States of America in a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then and there this writ.

Witness, the Honourable John Marshall, Chief Justice of our Supreme Court, the first Monday of August, in the year of our Lord, eighteen hundred and twenty-eight.

N. W. issued the 24th day of October, 1828.

PHILIP MOORE, *Clerk, C. C.*

At which mentioned 8th day of December, 1828, being the day of the return of the aforegoing writ, comes into the Circuit Court here, the said United States of America, by their Attorney aforesaid, and the Marshal of the District of Maryland aforesaid, to wit: Thomas Finley, gentlemen, to whom the said aforegoing writ, was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Summoned, Doctor John Groome, President; Directors, Alexander Scott, Levi Tyson, Adam

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Whama, Frisby Henderson, Andrew F. Henderson, Henry H. Gilpin, Joshua Richardson.

"THOMAS FINLEY, *Marshal.*"

And thereupon the said President and Directors of the Elkton Bank of Maryland, being called, appear in court here, by Charles Mitchell, their Attorney, &c.

DECLARATION.

THE UNITED STATES OF AMERICA.

Maryland District, ss.

The President and Directors of the Elkton Bank of Maryland, were summoned to answer unto the United States of America, in a plea of tresspass on the case, &c.

And whereupon the United States of America by Nathaniel Williams, Attorney of the United States for the District of Maryland, complain: For that whereas the President and Directors of the Elkton Bank of Maryland, the Defendants in this cause, on the first day of March, in the year eighteen hundred and twenty-five, to wit: at the District aforesaid, were indebted to the said United States in the sum of thirty thousand dollars, for divers, goods, wares and merchandise, by the said United States before that time sold and delivered to the said Defendants, and at their special instance and request; and also in a like sum for money by the said United States before that time, lent and advanced to, and paid, laid out and expended for the said Defendants, and at their like special instance and request; and also in a like sum of money, for other money by the said Defendant, before that time had, and received to and for the use of the said United States, and being so

indebted, the said Defendants in consideration thereof afterwards, to wit: on the day and year aforesaid, at the District aforesaid undertook, and then and there faithfully promised the said United States to pay them the said several sums of money in this count mentioned, when the said Defendants should be thereunto afterwards requested.

And whereas also the said Defendants afterwards, to wit: on the day and year aforesaid, at the District aforesaid, accounted with the said United States, of and concerning divers other sums of money, before that time due, and owing from the said Defendants to the said United States, and then being in arrear and unpaid, and upon such accounting the said Defendants were then and there found to be in arrear and indebted to the said United States in another large sum of money, to wit: in the further sum of thirty thousand dollars; and being so found in arrear and indebted, the said Defendants in consideration thereof afterwards, to wit: on the day and year aforesaid, at the District aforesaid, undertook and faithfully promised the said United States to pay them the last mentioned sum of money, when the said Defendants should be thereto afterwards requested. Nevertheless, the said Defendants not regarding their said promises and undertakings, have not yet paid the aforesaid several sums of money, or either of them, or any part of either of them to the said United States, (although so to do the said Defendants were requested by the said United States, to wit: on the day and year aforesaid, and often afterwards at the District aforesaid,) but to pay the same, the said Defendants have hitherto altogether refused, and do still refuse so to do, to the damage

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of the said United States, fifty thousand dollars, and thereupon they bring suit, &c.

NATH'L WILLIAMS,
District Attorney, Md. Dist.

And the said President and Directors of the Elkton Bank of Maryland, by their Attorney aforesaid, filed in the Circuit Court here, the following pleas, to wit.

PLEAS.

The President and Directors of the Elkton Bank of Maryland. *advs.* THE UNITED STATES. } Circuit Court of the United States—Fourth Circuit, Maryland District. *Action of Assumpsit.*

1st. And the said defendant, the President and Directors of the Elkton Bank of Maryland, comes and defends the wrong and injury when, &c., and saith that the said Corporation did not undertake or promise in manner or form as the plaintiffs, the United States, hath above thereof complained against it, and of this the said Corporation, the said defendant, puts itself upon the country, &c.

And the said United States of America in like manner, &c.

2d. And for further plea in this behalf, the said defendant, the President and Directors of the Elkton Bank of Maryland, saith, (leave of the Court here for this purpose being first had and obtained, according to the statute in such case made and provided,) that the United States, the said plaintiff, ought not to have or maintain the action aforesaid against the said Corporation, because the said defendant saith, that the said Corporation did not at any time, within three years next before the day of impetrating of the ori-

ginal writ of the United States in this cause against the said defendants, undertake or promise in manner and form as the United States hath above complained, and this the said defendant is ready to verify: Wherefore the said defendant prays judgment if the United States ought to have or maintain the action aforesaid against said defendant.

3d. And the said defendant, with the leave of the Court here first had and obtained, according to the form of the statute in such case made and provided, further comes and defends the wrong and injury, when, &c., and saith, that the United States the action aforesaid against the said defendant to have or maintain ought not, because the said defendant saith, that the action of the United States did not first accrue, nor did any of the said causes of action first accrue against the said defendant, within three years next before the day of the commencement of this suit by the issuing the original writ of the United States against the said defendant in this cause, and this the said defendant is ready to verify, &c.: Wherefore the said defendant prays judgment if the said plaintiff ought to have or maintain the aforesaid action thereof against the said defendant, &c.

4th. And for further plea in this behalf, (leave of the Court being first had and obtained for that purpose, according to the statute in such case made and provided,) the said defendant, further defends the wrong and injury, when, &c., and saith that the United States, the said plaintiff, its action aforesaid against the said defendant ought not to have or maintain; because the said defendant saith, that after the said supposed promises and undertakings, in the plaintiff's declaration mentioned, (if any were made,) and before the

commencement of this suit, to wit, on the 13th day of February, in the year of our Lord 1819, the said plaintiff, by the authorised agent of the said plaintiff, received and accepted from the said defendant an assignment, transfer and delivery of a certain Bond or writing obligatory, sealed with the seals of Geo. Davidson and Philip Thomas, both of Cecil county, in the state of Maryland, and bearing date on the 22d day of September, in the year 1818, whereby the said Philip and George acknowledged themselves, and each of them himself, jointly and severally, and their, and each of their heirs, executors, and administrators, to be held and firmly bound unto the President and Directors of the Elkton Bank of Maryland, in the penal sum of $28,500 current money, to be paid to the said President and Directors, their successors or assigns, with condition there under written, that if the said Philip Thomas should pay or cause to be paid, on or before the first day of January, in the year 1820, to the said President and Directors of the Elkton Bank of Maryland, their lawful attorney, successors or assigns, the just and full sum $14,250 with legal interest thereon from the date of said bond until paid, then the said obligation to be void, else to be and remain in full force and virtue in law, which said bond or writing obligatory, was on the day and year first in this plea above mentioned duly assigned, transferred, and set over by the said Corporation under its corporate seal, and the signature of its President unto the said United States, and by the said United States through their proper agent duly authorized thereto, accepted in full satisfaction and discharge of the several promises and undertakings in the said declaration

mentioned, and of all damages and sums of money due or owing thereupon, or thereupon accrued, and this the said defendant is ready to verify, &c. Wherefore the said defendant prays judgment, if the said United States ought to have or maintain the aforesaid action thereof against the defendant.

5th. And for further plea in this behalf by leave of the Court here first had and obtained therefor according to the statute in such case made and provided, the said defendant by its attorney aforesaid saith, that the United States ought not to have or maintain the action aforesaid against the said defendant, because the said defendant saith that after the said several supposed promises and undertakings in the declaration aforesaid mentioned were made, if any such were made, and before the commencement of this suit the said plaintiff by the authorized agent of the United States, received and accepted from the defendant, an assignment and transfer under the seal of the defendant, and signature of the President of the said Corporation, duly executed, of a certain bond or writing obligatory of one Philip Thomas and one George Davidson, both of Cecil county, in the State of Maryland; duly executed by them the said Thomas and Davidson, payable to the said defendant, its successors or assigns, under their seals, in the penal sum of $28,500, bearing date the 22d day of September 1818, conditioned for the payment by Philip Thomas, of the sum of $14,250, with legal interest from the date of said bond, on or before the 1st day of January in the year 1820, to the President and Directors of the Elkton Bank of Maryland, their lawful attorney, successors or assigns; which assignment

aforesaid was made and accepted as aforesaid, in the district of Maryland, on the 13th of February, 1819, and was made and given by the said defendant at the special instance of the said United States, with an express agreement and understanding at that time between the said defendant, and the said agent of the United States who received the said assignment, that the United States should without delay, immediately after the day of payment mentioned in the condition of said bond, commence suit thereon and proceed diligently to collect the same by due process of law, against and from the said obligors, if the condition of said bond should not be strictly complied with on or before that day; and the said defendant avers, that at the time of the said assignment, the whole sum mentioned in the condition of the said bond was justly due, and owing from the said obligors to the said defendant, to be paid on or before the said 1st day of January 1820, and that no part thereof hath since been paid to the defendant. And further, that when the said bond became due and payable by the said condition, the said obligors were solvent and able to pay the same, and so continued to be until the same might have been collected from them by due process of law, if the United States had complied with the said agreement and undertaking, and had immediately after the day of payment had passed, had put the said bond in suit against the said obligors; but instead thereof, the United States, notwithstanding the said condition of said bond was broken and the money therein mentioned not paid on or before the day mentioned, therein wholly neglected, and refused to commence suit thereon against either of

the said obligors; but on the contrary, gave the said Philip Thomas further and longer time for the payment thereof until said obligors became insolvent, without notice to this defendant, or without the consent or concurrence of this defendant, and the said Thomas and Davidson have since the said delay and indulgence was granted as aforesaid by the plaintiff, become utterly insolvent and unable to satisfy the said debt, by means whereof the said debt hath been utterly lost through the negligence and default of the United States as aforesaid, except so far as payments thereon have been made to the said plaintiff. And the defendant further saith, that the said sum of money in the condition of the said bond mentioned, was sufficient to have paid and satisfied all the said supposed promises and undertakings of this defendant in the said declaration mentioned, and the plaintiff's damages, and was so admitted and accepted by the said agent of the United States, when the said assignment was accepted by them, and the plaintiff still holds and retains the said bond; and so the defendant saith it hath paid and satisfied in manner and form aforesaid, all the said supposed promises and undertakings in the plaintiff's declaration mentioned, and this the said defendant is ready to verify, &c. Wherefore the defendant prays judgment, if the said plaintiff ought to have or maintain the action aforesaid against the said defendant. CHARLES MITCHELL,

Defendant's Attorney.

General Demurrer to the 2d Plea.—Whereupon, the said United States of America, by their attorney aforesaid say, that the second plea above plead-

ed as aforesaid by the said President and Directors of the Elkton Bank of Maryland, in manner and form aforesaid, and the matters in the same contained, are not sufficient in law to preclude them the said United States, from having and maintaining their action aforesaid thereof, against them the said President and Directors of the Elkton Bank of Maryland, to which said plea in manner and form aforesaid above pleaded, they the said United States of America have no necessity nor are by the law of the land, obliged in any manner to answer, and this they are ready to verify: Wherefore, for want of a sufficient plea in this behalf, the said United States pray judgment, and their damages aforesaid to be adjudged unto them, &c.

Joinder.—Whereupon, the said President and Directors of the Elkton Bank of Maryland, by their attorney aforesaid say, that the said second plea above by them as aforesaid, in manner and form as aforesaid pleaded, and the matters in the same contained, are good and sufficient in law, to preclude them the said United States from having or maintaining their action aforesaid thereof, against them the said President and Directors of the Elkton Bank of Maryland, which said plea and the matters therein contained, the said President and Directors of the Elkton Bank of Maryland, are ready to verify and prove as the court, &c.; and because the said United States do not answer to that plea, or the same hitherto deny, the said President and Directors of the Elkton Bank of Maryland, as before pray judgment, and that the said United States may be precluded from having or maintaining their action

aforesaid thereof against them, the said President and Directors of the Elkton Bank of Maryland, &c.

Judgment.—Whereupon, all and singular the said premises being seen and fully understood by the court here, for that it appears to the court here, that the said plea of the said President and Directors of the Elkton Bank of Maryland, secondly above by them pleaded in bar, and the matters therein contained are not sufficient in law to preclude the said United States from having and maintaining their action against the President and Directors of the Elkton Bank of Maryland, in manner and form as the said United States have above alleged. Therefore it is considered by the court here, that the said United States recover against the said President and Directors of the Elkton Bank of Maryland, the sum of $50,000, their damages aforesaid, which they had sustained by reason of the non-performance of the promises and assumptions aforesaid. As also the sum of $ by the Court here, unto the said United States on their assent, adjudged for their costs and charges by them about their suit in that behalf laid out and expended. And the said President and Directors of the Elkton Bank of Maryland, in mercy, &c.

General Demurrer to the 3d Plea.—Whereupon, the said United States by their attorney aforesaid say, that the third plea above pleaded as aforesaid by the said President and Directors of the Elkton Bank of Maryland, in manner and form aforesaid and the matters in the same contained, are not sufficient in law to preclude them the said United States from having and maintaining their action aforesaid, thereof, against them the said President and Directors

of the Elkton Bank of Maryland, to which said plea in manner and form aforesaid above pleaded, they the said United States have no necessity, nor are by the law of the land obliged in any manner to answer; and this they are ready to verify: Wherefore for want of a sufficient plea in this behalf, the said United States pray judgment, and their damages aforesaid to be adjudged to them, &c.

Joinder.—Whereupon the said President and Directors of the Elkton Bank of Maryland, by their attorney aforesaid, say, that the said third plea, above by them as aforesaid, in manner and form as aforesaid pleaded, and the matters in the same contained are good and sufficient in law to preclude the said United States from having or maintaining their action aforesaid thereof against them the said President and Directors of the Elkton Bank of Maryland; which said plea, and the matters therein contained, the said President and Directors of the Elkton Bank of Maryland are ready to verify and prove, as the Court, &c.; and because the said United States do not answer to that plea, nor the same hitherto deny, the said President and Directors of the Elkton Bank of Maryland, as before, pray judgment, and that the said United States may be precluded from having or maintaining their action aforesaid thereof against them, the said President and Directors of the Elkton Bank of Maryland, &c.

Judgment.—Whereupon all and singular the said premises being seen and fully understood by the Court here, for that it appears to the Court here that the said plea of the said President and Directors of the Elkton Bank of Maryland thirdly above by them pleaded in bar, and the matters therein

contained, are not sufficient in law to preclude the said United States from having and maintaining their said action against the said President and Directors of the Elkton Bank of Maryland, in manner and form as the said United States have above alleged; therefore it is considered by the Court here, that the said United States recover against the said President and Directors of the Elkton Bank of Maryland, as well the sum of $50,000 for their damages, which they had sustained by reason of the non-performance of the promises and assumptions aforesaid, as also the sum of $ by the Court here unto the said United States on their assent adjudged for their costs and charges, by them about their suit in that behalf laid out and expended. And the said President and Directors of the Elkton Bank of Maryland, in mercy, &c.

And thereupon the said United States of America, by their attorney aforesaid, file in the Circuit Court here, their replication to the 4th and 5th pleas of the said President and Directors of the Elkton Bank of Maryland above by them pleaded, in form following, to wit:

Replication and Issue to the 4th Plea.—And the said United States, as to the plea of the said President and Directors of the Elkton Bank of Maryland, by them fourthly above pleaded, say, that the said United States, by reason of any thing by the said defendants in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the defendants, because the plaintiffs say, they did not accept in full satisfaction and discharge of the several promises and undertakings in the said Declaration mentioned, and

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of all damages and sums of money due and owing thereupon, or thereupon accrued, an assignment, transfer and delivery of a certain bond, or writing obligatory, signed and executed by a certain Philip Thomas and George Davidson, to and in favour of the defendants, their successors or assigns, as described in the said plea of the defendants, nor an assignment, transfer, and delivery of any other bond or writing obligatory, in manner and form as the defendants have above alleged; and this the plaintiffs pray may be inquired of by the country, &c.

And the said President and Directors of the Elkton Bank of Maryland, in like manner, &c.

Replication and Issue to the 5th Plea.—And the said United States, as to the plea of the defendants, by them fifthly above pleaded, say, that the plaintiffs, by reason of any thing by the defendants in that plea alleged, ought not to be barred from having and maintaining their aforesaid action thereof against the defendants, because, (protesting that the debt in the said plea referred to, and described as due from the said Philip Thomas, was not lost through the neglect and default of the United States,) nevertheless, for further plea in this behalf, by way of replication, the plaintiffs say, that there was no express or other agreement, or understanding, at the time of the assignment of the bond or writing obligatory of the said Philip and George, as in said plea described, nor at any other time between the defendants and the agent of the plaintiffs, who received the said assignment, that the plaintiffs should without delay, immediately after the day of payment mentioned in the condition of the said Bond, commence suit thereon, and proceed diligently to collect

the same, by due process of law against the said obligors, if the condition of said bond should not be strictly complied with on or before that day, in manner and form as the defendants have above alleged; and this the plaintiffs pray may be inquired of by the country, &c.

And the said President and Directors of the Elkton Bank of Maryland, in like manner, &c.

Therefore let a Jury thereon appear before the Court here immediately, by whom, &c. who neither, &c. to recognize, &c. because as well, &c.

Verdict for the plaintiffs, for $21,200.

Memorandum.

Judgment rendered in this cause on this 14th day of December, 1829, for the damages laid in the declaration, and costs. The said damages to be released on payment of the sum of $21,200, with interest thereon from the 14th day of December 1829, till paid, and costs of suit.

Memorandum.

Before the Jurors aforesaid withdrew from the Bar of the Court here, the said President and Directors of the Elkton Bank of Maryland, by their attorney aforesaid, tendered to the Court here the following Bills of Exception, which were signed and sealed by the Court here, and which are in form following, to wit:

FIRST EXCEPTION.

The United States, vs. The President and Directors of the Elkton Bank of Maland.	Action on the case.

In the progress of this Cause, the plaintiffs, in order to support the issue on their part, offered in evidence to the Jury the following paper, as an original deed of mortgage from Philip Thomas to the defendants, with the paper writing attached thereon, and proved by legal and competent evidence that the said paper was in the hand writing of Tobias Rudolph, now deceased, who was at the date of said paper, long before and after, one of the Directors of said Bank, and their Counsel in law, and also proved by the said testimony that the seal affixed thereto was the public seal of the defendants.

[*Deed of Mortgage omitted.*]

THE PAPER ATTACHED THERETO.

Whereas on the 15th day of February, A. D. 1819, a copy of the annexed and aforegoing mortgage was assigned by the Elkton Bank of Maryland to William Whann, as agent for the Treasury of the United States, as collateral security for the payment of $20,000 on that day due the said United States, as per account, then settled with the said William Whann, agent as aforesaid, which assignment is said to be lost or mislaid. And for the purpose of placing the said transaction upon the same footing on which it then stood, this present assignment is made.

For the consideration aforesaid, and to secure to the said United States the payment of the said $20,000 together with interest thereon, from the said 18th of February 1819, we, the President and Directors of the Elkton Bank of Maryland, do this 1st day of May 1824, assign, transfer and set over to the United States, and to their proper officers and

agents, the annexed and aforegoing mortgage, and the bonds therein mentioned, and the debt or sum of money thereon due.

In testimony whereof the said President and Directors of the Elkton Bank of Maryland [L. .S] have caused the corporate seal of the said Institution to be hereunto affixed, this 1st day of May A. D. 1824.

To the admissibility of which evidence, without further evidence that search had been made for the original contract in said paper referred to, and the same not found, or that the same had been lost, it being admitted that the original agreement was in writing as appears by the paper aforesaid of the 1st May 1824, the defendants by their Counsel objected; but the Court overruled the objection, and held the evidence admissible. To which admission the defendants, by their Counsel, prayed leave to except, and that the Court here would sign and seal this their first Bill of exception, which is accordingly done this 15th day of December 1829.

G. DUVALL, (Seal.)
ELIAS GLENN, (Seal.)

SECOND EXCEPTION.

The United States,
vs.
The President and Directors of the Elkton Bank of Maryland. } Case.

The plaintiffs, to support the issue on their part, called James Sewell a competent witness, who testified he was Director of the Elkton Bank during the years 1819, 1820 and thence to 1824, that during that period Tobias Rudolph, Esq. (now dead) was

attorney for the Bank in Cecil county, and as such carried on its suits there, and as their legal counsel in all cases, (except that he did not conduct suits out of said county,) drew its writings, and did the other business of the attorney of the Corporation; and that said Rudolph was a Director of the Bank from before 1819 until after 1824. But being examined by the defendants counsel, he testified that during this period he the witness, never knew that any authority was ever given to Rudolph, to write any letters for the Bank, or to do any other act than pertained to the business of an attorney in Cecil, and counsel as aforesaid. That while he was President of the Bank, he wrote all his own letters; and F. Henderson, who succeeded him in the office, being called, testified that he never knew of Rudolph's being authorized to write letters for the Bank, or that he ever wrote any; that he, the said Frisby Henderson, sometimes wrote the letters, and sometimes the Cashier wrote them, and then he the said Frisby Henderson signed them. Whereupon the plaintiffs offered in evidence, the following letter, admitted to be in Rudolph's hand writing.

Elkton, September 25th, 1824.

U. S. Heath and N. Williams, Esqrs.

Gentlemen,—The Cashier of the Elkton Bank of Maryland has this day communicated to me your joint letter, containing the terms upon which Mr. Philip Thomas is about to settle the claim which the United States now holds against him, as assignees of this institution. As attorney for the Bank, I reply that the Board have had a conversation with Mr. Thomas on the subject, and are perfectly satisfied

and desirous that the claim should be settled and paid off, upon the terms and in the manner stated in your letter.

Should you require any further or more official confirmation of the arrangement, be pleased to notice to me the form in which you desire the Corporation to give their assent, and it shall be done.

Very respectfully,

Gentlemen, Yours,

TOBS. RUDOLPH.

Attorney for the Elkton Bank.

To the admission of which the defendants objected, on the ground of his want of authority to write it, and because the letter was not offered in evidence to which it professes to be an answer, and as incompetent evidence against the defendants; but the Court overruled the objection, and held the evidence admissible; to which admission the defendants by their counsel prayed leave to except, and that the Court here would sign and seal this their second bill of exception, which is accordingly done this 15th day of December 1829.

G. DUVALL, (Seal.).

ELIAS GLENN, (Seal.)

Afterwards, to wit, on the 15th day of December, 1829, the aforesaid President and Directors of the Elkton Bank of Maryland, &c.

WRIT OF ERROR—CITATION, &c.

In testimony that the aforegoing, &c.

PHILIP MOORE,

Clerk of the Circuit Court, U. S.

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THE

UNITED STATES OF AMERICA,

District of Maryland, to wit:

At a Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District, begun and held at the City of Baltimore on the 8th day of April, 1830.

PRESENT, THE HONOURABLE

GABRIEL DUVALL, *one of the Associate Justices of the Supreme Court of the United States.*
ELIAS GLENN, *Judge of Maryland District.*
NATH'L WILLIAMS, Esq. *Attorney.*
THOMAS FINLEY, Esq. *Marshal.*
PHILIP MOORE, *Clerk.*

Among other, were the following proceedings, to wit:

THE UNITED STATES *vs.* THOMAS G. REYBURN. } Be it remembered, &c.

INDICTMENT.

At a Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland.

May Term, 1829.

1. The Grand Inquest of the United States of America for the Fourth Circuit, inquiring for the body of the District of Maryland, upon their oath present, that Thomas G. Reyburn, late of the district of Maryland, yeoman, on the 1st day of July, 1828, at the district of Maryland, within the Territory and jurisdiction of the United States, and within the jurisdiction of this Court, did with force

and arms issue a commission for a certain vessel called the Jane, otherwise called the Congresso, to the intent that such vessel might be employed in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata, to cruise and commit hostilities against the subjects and property of a foreign Prince, that is to say, his imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

2. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas G. Reyburn, on the day and year aforesaid, at the District aforesaid, within the Territory and jurisdiction of the United States, and within the jurisdiction of this Court, did with force and arms deliver a commission for a certain other vessel, called the Jane, otherwise called the Congresso, to the intent that such vessel might be employed in the service of a foreign people, that is to say, the service of the United Provinces of Rio de la Plata, to cruise and commit hostilities against the subjects and property of a foreign prince, that is to say, against the subjects and property of his Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

3. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas G. Reyburn, on the day and year aforesaid, at the District aforesaid, within the Territory and jurisdiction of the United States, and within the jurisdiction of this Court, did with force and arms deliver a commission to a certain John Chase, for a certain other vessel called the Jane, otherwise called the Congresso, to the intent that such vessel might be employed in the service of a foreign people, that is to say, the United Provinces of Rio de la Plata, to cruise and commit hostilities against the subjects and property of a foreign prince, that is to say, his Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

4. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas G. Reyburn, on the day and year aforesaid, at the District aforesaid, within the Territory and jurisdiction of the United States, and within the jurisdiction of this Court, did with force and arms issue a commission to a certain John Chase for a certain vessel called the Jane, otherwise called the Congresso, to the intent that such vessel might be employed in the service of a foreign people, that is to say, the United Provinces of Rio de la Plata, to cruise and commit hostilities against the subjects and property of a foreign prince, that is to say, his Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were

and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

5. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas G. Reyburn, on the day and year aforesaid, at the District aforesaid, within the Territory and jurisdiction of the United States, and within the jurisdiction of this Court, did with force and arms deliver a commission for a certain vessel called the Jane, otherwise called the Congresso, to the intent that such vessel might be employed in the service of a foreign people, that is to say the United Provinces of Rio de la Plata, to commit hostilities against the subjects of a foreign prince, that is to say, his Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States of America.

6. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas G. Reyburn, on the day and year aforesaid, at the District aforesaid, within the Territory and jurisdiction of the United States, and within the jurisdiction of this Court, did with force and arms deliver a commission for a certain other vessel called the Jane, otherwise called the Congresso, to the intent that such vessel may be employed in the service of a foreign people, that is to say, the United Provinces of Rio de la Plata, to commit hostilities against the subjects of a foreign prince, that is to say, his Imperial

Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States of America.

NATHANIEL WILLIAMS,
Attorney of the United States for the District of Maryland.

PLEA.

At which said 8th day of December, 1829, come again into the Circuit Court here, as well the said United States of America by Nathaniel Williams, who prosecuted for the said United States, as the said Thomas G. Reyburn the Traverser, by John Glenn and John V. L. McMahon his Attorneys. And the said Thomas G. Reyburn in proper person having heard the said Indictment read to him, says that as to the said Indictment and the matters and things therein contained, he the said Thomas G. Reyburn is not guilty thereof, and of this the said Thomas G. Reyburn puts himself upon the country, and the said United States of America in like manner, &c.

Whereupon for trying the issue aforesaid, let a Jury thereon appear before the Court here immediately, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

STATEMENT.

THE UNITED STATES *vs.* THOMAS G. REYBURN. } Circuit Court. U. S. April Term, 1830.

In order to support the prosecution in this case, the United States by their Counsel offered in evidence, that the Privateer referred to in the Indict-

ment was built and fitted out in the Port of Baltimore in the District of Maryland, for a certain John Chase, also therein mentioned: that the Jane was commanded from the Port of Baltimore to St. Barts, thence to St. Eustatia in the West Indies, and the crew was shipped in said Port of Baltimore, at the request of Franklin Chase, a brother of said John Chase, the said Franklin Chase being the only person known to the shipper of the crew; that she sailed from the said Port to the West Indies, under the name of the Jane, that at St. Eustatia the said vessel hoisted Buenos Ayrean colors, changed her name to that of the Congresso, and performed a cruise, under the command of the said John Chase, exercising therein acts of hostility against the subjects and government of Brazil.

The United States further gave in evidence, from the Records of this Court, that the aforesaid John Chase stood indicted for a misdemeanor for accepting in the District of Maryland a commission to cruise, and for cruising with the said Privateer against the Government and subjects of the empire of Brazil; that a Bench Warrant had been repeatedly issued out against said Chase, but that he could not be found, and the process was always returned *non est inventus.*

Whereupon the counsel for the United States proceeded to inquire of a legal and competent witness, whether he saw a Commission on board the said Privateer? But the Traverser by his Counsel objected to the admissibility of any evidence relative to the character, or the contents of the said Commission, because the Commission was not produced by the United States or obtained from any witness, nor a

copy procured from the public archives of Buenos Ayres, nor its destruction proved, nor any efforts to procure it shown by the United States.

And the Judges of the aforesaid Court, being opposed in opinion upon the admissibility of the said evidence, do at the request of the Attorney of the United States for the District of Maryland, state and certify their said opposition in opinion to the Supreme Court of the United States, according to the Act of Congress in such case made and provided. And this Court, being also of opinion that further proceedings could not be had in the aforesaid cause without prejudice to the merits of the same, did order that the Jury impanneled herein, be discharged from giving any verdict therein.

In testimony that the foregoing, &c.

PHILIP MOORE,
Clerk.

THE

UNITED STATES OF AMERICA,

District of Maryland, to wit:

At a Circuit Court of the United States for the Fourth Circuit, in and for the Maryland District, begun and held at the City of Baltimore on the 8th day of April, 1830.

PRESENT, THE HONOURABLE

GABRIEL DUVALL, *one of the Associate Justices of the Supreme Court of the United States.*
ELIAS GLENN, *Judge of Maryland District.*
NATH'L WILLIAMS, Esq. *Attorney.*
THOMAS FINLEY, Esq. *Marshal.*
PHILIP MOORE, *Clerk.*

Among other, were the following proceedings, to wit:

THE UNITED STATES
vs.
JOHN D. QUINCY. } Be it remembered, &c.

INDICTMENT.

At a Circuit Court of the United States for the Fourth Circuit, in and for the District of Maryland. *May Term*, 1829.

1. The Grand Inquest of the United States of America, for the Fourth Circuit, inquiring for the body of the District of Maryland, upon their oath do present, that John D. Quincy, late of the District of Maryland, mariner, a citizen of the United States, on the 31st day of December, 1828, at the District of Maryland, within the territory of the United States, and within the jurisdiction thereof, and of

this court, with force and arms, did accept and exercise a commission to serve a foreign people in war by sea, that is to say, to serve "The United Provinces of Rio de la Plata" in war by sea, against a Prince, that is to say, against "His Imperial Majesty, the Constitutional Emperor and Perpetual Defender of Brazil," with whom the United States then were, and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

2. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof and of this Court, did with force and arms enter himself in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, on board of the Privateer called the Bolivar, otherwise called Las Damas Argentinas. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy was not then, nor is he now either a citizen or a subject of the said foreign people, The United Provinces of Rio de la Plata, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

3. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof

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and of this Court, did, with force and arms, enter himself to go beyond the limits of the United States, with intent to be entered in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say on board of the Privateer called the Bolivar, otherwise called Las Damas Argentinas. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy was not then, nor is he now either a citizen or a subject of the said foreign people, The United Provinces of Rio de la Plata, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

4. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof and of this court, did with force and arms, enter himself to go beyond the limits of the United States, with the intent to be entered in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, the Privateer called the Bolivar, otherwise called Las Damas Argentinas, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

5. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof and of this

Court, did, with force and arms, go beyond the limits of the United States, with intent to be entered in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, the Privateer called the Bolivar, otherwise called Las Damas Argentinas, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

6. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof and of this Court, did, with force and arms, enlist himself in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, on board of the Privateer called the Bolivar, otherwise called Las Damas Argentinas. And the Jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy was not then, nor is he now either a citizen or a subject of the said United Provinces of Rio de la Plata, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

7. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this Court, did, with force and arms, enlist himself

to go beyond the limits of the United States, to be enlisted in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, on board of the Privateer called the Bolivar, otherwise called Las Damas Argentinas. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy was not then, nor is he now either a citizen or a subject of the United Provinces of Rio de la Plata, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

8. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory and jurisdiction of the United States, and within the jurisdiction of this court, did, with force and arms, enlist himself in the service of a foreign people, that is to say, in the service of the United Provinces of Rio de la Plata, as a seaman on board of the Privateer called the Bolivar, otherwise called Las Damas Argentinas. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy was not then, nor is he now, either a citizen or a subject of the United Provinces of Rio de la Plata, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

9. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory of the United

States, and within the jurisdiction thereof, and of this court, did, with force and arms, enter himself in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, on board of the Privateer called the Bolivar, otherwise called Las Damas Argentinas, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

10. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof, and of this Court, did, with force and arms, go beyond the limits of the United States, with intent to be entered in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, called the Bolivar, otherwise called Las Damas Argentinas. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy was not then, nor is he now a citizen or a subject of the United Provinces of Rio de la Plata, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

11. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof and of this Court, did, with force and arms, enlist himself

in the service of a foreign people, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, on board of the Privateer called the Bolivar, otherwise called Las Damas Argentinas, against the form of the act of Congress, in such case made and provided, and against the peace, government and dignity of the United States.

12. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the limits of the United States, and within the jurisdiction of the United States and of this Court, with force and arms, was knowingly concerned in the fitting out of a certain vessel, called the Bolivar, otherwise called Las Damas Argentinas, with intent that such vessel be employed in the service of a foreign People, that is to say, in the service of "The United Provinces of Rio de la Plata," to commit hostilities against the subjects of a foreign Prince, that is to say, against the subjects of "His Imperial Majesty, the Constitutional Emperor and Perpetual Defender of Brazil," with whom the United States then were, and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

13. And the jurors aforesaid upon their oath aforesaid do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the limits of the United States, and within the jurisdiction of the United States and of this Court, with force and arms, was knowingly concerned in the fitting out a certain other vessel,

called the Bolivar, otherwise called Las Damas Argentinas, with intent that the said vessel should be employed in the service of a foreign People, that is to say, in the service of The United Provinces of Rio de la Plata, to cruise and commit hostilities against the subjects and property of a foreign Prince, that is to say, against the subjects and property of His Imperial Majesty The Constitutional Emperor and Perpetual Defender of Brazil, with whom the United States then were, and still are at peace, against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

14. And the jurors aforesaid upon their oath aforesaid do further present, that the said John D. Quincy on the day and year aforesaid at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof and of this Court, did, with force and arms, enter himself in the service of a foreign People, that is to say, in the service of The United Provinces of Rio de la Plata, as a seaman on board of a Privateer, that is to say, the Privateer called the Bolivar, otherwise called Las Damas Argentinas. And the jurors aforesaid upon their oath aforesaid do further present, that the said John D. Quincy was not a subject nor a citizen of the said foreign People, The United Provinces of Rio de la Plata, then and there transiently within the United States, and who, on board of the said Privateer called the Bolivar, otherwise called Las Damas Argentinas, which, at the time of its arrival within the United States, was fitted and equipped as such, did, enter himself to serve such foreign people on board of the said Privateer, (the United

States then and there being at peace with the said foreign people, the United Provinces of Rio de la Plata,) against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

15. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy, on the day and year aforesaid, at the District aforesaid, within the territory of the United States, and within the jurisdiction thereof and of this Court, did, with force and arms enter himself in the service of a foreign People, that is to say, in the service of the United Provinces of Rio de la Plata, as a seaman on board of a Privateer called the Bolivar, otherwise called Las Damas Argentinas. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said John D. Quincy was not a subject or a citizen of the said foreign People, the United Provinces of Rio de la Plata, then and there transiently within the United States, and who on board of the said Privateer, called the Bolivar, otherwise called Las Damas Argentinas, which at the time of its arrival within the United States was fitted and equipped as such, did enter himself to serve a foreign people, on board of the said Privateer, (the United States then and there being at peace with the said foreign people, the United Provinces of Rio de la Plata,) against the form of the act of Congress in such case made and provided, and against the peace, government and dignity of the United States.

NATHANIEL WILLIAMS,—*Attorney of the United States, for the District of Maryland.*

PLEA.

At which said 8th day of April, 1830, came again into the Circuit Court here, as well the said United States of America, by Nathaniel Williams, who prosecuted for the said United States, as the said John D. Quincy, by William H. Freeman, John Glenn and William Wirt his attorneys. And the said John D. Quincy in proper person having heard the said indictment read to him, says, that as to the said indictment, and the matters and things therein contained, he, the said John D. Quincy is not guilty thereof; and of this the said John D. Quincy puts himself upon the country, and the said United States of America in like manner, &c.

Whereupon, for trying the issue aforesaid, let a jury thereon appear before the Court here immediately, by, &c. and who neither, &c. to recognize, &c. because as well, &c.

STATEMENT.

THE UNITED STATES *vs.* JOHN D. QUINCY. } Circuit Court of the United States, fourth Circuit, Maryland, District, April Term, 1830.

The United States, to support the prosecution in this case, gave in evidence, by *Hugh McElderry*, then carrying on a ship yard, that he knew the Bolivar; she was a Maryland pilot boat built schooner, of 60 or 70 tons burthen, and was repaired in 1827 at his yard, having there put on her two new masts, a bowsprit, caulked, and other work to about $300; the work was done at the request of Henry Armstrong, who paid the bill, and spoke of the vessel as his. John D. Quincy, the traverser, superintended the above repairs, and gave direction as to the size of the masts, &c. by direction of said Armstrong.

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And further gave in evidence by *Daniel James*, that at the request of Captain Patterson, he shipped, in September 1827, a crew of four men, a Cook and Steward for the Bolivar, being an ordinary crew for a vessel of her size, engaged in trade or mercantile voyages, that he saw no armament on board the said schooner, which hauled into the stream, and sailed as soon as she got her crew. Quincy, the traverser paid witness for shipping the said crew.

And further gave in evidence by *David Mc Gaughan*, that he coppered the said schooner about the period aforesaid, put in her hause leads, at the request of the traverser, who paid him therefor. Witness did not see on board any gun pivot.

And gave in evidence by *J. Davidson*, that about the same time he furnished ship chandlery for the said schooner, at the traverser's request, who occasionally superintended the putting of them up. Witness was paid therefor by Armstrong.

And gave in evidence, by *John Hutson*, that he knew the Bolivar in 1827; she was fitted for the purpose for which she was used, fitted for a forced trade, to break a blockade, or for a Guineaman; she was too small for a merchant vessel; her sails were as large as those of a schooner of 200 tons; she was very sharp, and her spars were large, and her two old masts were taken out and replaced; that such vessels are often sent to the West Indies for sale; and if he had rigged her, he should have rigged her in the same way; and he saw a good many long coated gentlemen on board of her when she sailed.

And gave in evidence, by *M. Hooper*, that he applied to the Traverser for the job of making sails

for the Bolivar, who, saying he had not the privilege of doing so, referred him to Armstrong, who employed him. The Traverser gave directions how the sails were to be made; they were uncommonly small for a vessel of her class, and her spars shorter by 5 or 6 feet than when she was a pilot boat; her sails were calculated for a merchant vessel merely, and the Bolivar was not peculiarly fitted by her sails for a fast vessel. He was on board the Bolivar at Baltimore and thinks he saw a pivot for a gun carriage.

And gave in evidence by *G. Meyer*, that the Traverser sent for a hasp for the companion-way of the Bolivar, which he furnished, but failed to pay for.

And gave in evidence by *J. Glass*, that he was employed by Traverser to lay down a platform in the Bolivar, consisting of boards as usual, and called a birth deck: the work was superintended by the Traverser, as also by Patterson, and paid for by Armstrong. He put such decks on vessels to carry slaves to New Orleans, and in ships to carry passengers, and that he saw no pivot on board the Bolivar.

And gave in evidence by *J. D. Daniels*, that he saw the Bolivar in 1827 before she went to sea, but saw no preparation for a cruise; saw Traverser after he returned, who told witness he had been on a cruise. This witness also proved, that Traverser was a native of St. Barts, and not a citizen of the United States.

And also gave in evidence by *H. W. Bool*, that he was on board a schooner while in the harbour, but does not know whether it was the Bolivar or not he saw a barrel put over a pivot for a gun, but saw

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no gun or munitions of war; he did not think the barrel was to conceal the pivot, but to keep off rain.

And further gave in evidence by *A. J. Hunter*, that he knew two passengers on board the Bolivar, (H. W. Cotterell and Daniel Patterson,) saw also Mr. Bates on board; all of them were Americans, and went as passengers in her.

And gave in evidence by *John K. Rowe*, that he sold thirteen kegs of powder to G. J. Brown, who told him they were for Henry Armstrong.

And gave in evidence by *George Ellis*, that he applied to Traverser for a passage in the Bolivar from Baltimore to St. Thomas, who referred him to Armstrong, saying he had nothing to do but to fit her out.

And also gave in evidence by *Columbus O'Donnell*, that about three years ago, (he thinks in the spring,) Armstrong asked witness to take a share in a Privateer which he had purchased, or was about to purchase; that the shares were five hundred dollars each; but Armstrong did not say under what power he would act.

And further gave in evidence by *D. B. Watts*, an inspector of the Revenue, that he was directed to see if the cargo of the Bolivar corresponded with her manifest, which he found was the case, and he saw no reason to stop her sailing.

The United States then gave in evidence the following advertisement, which had been inserted in the "American," a newspaper printed in the city of Baltimore:

"For Freight or Charter,

"The fast sailing coppered and copper fastened schooner, Bolivar, Capt. J. D. Quincy, expected to

carry between four and five hundred barrels, and will be ready to sail in ten or twelve days. Apply to the Captain on board, at Flannigan's ship yard.

Au. 16. d4t"

And also gave in evidence the following shipper's manifest, and export manifest of the outward cargo of the Bolivar, and bond.

SHIPPER'S MANIFEST.

Manifest of Merchandize Shipped by John D. Quincy, in the Schooner Bolivar, John M. Patterson, Master, from Baltimore to the West Indies.

MKS.	NOS.	PACKAGES AND CONTENTS.	ARTICLES, VALUE OF EACH KIND.			
			KINDS.	QUANT.	D.	C.
		Fifty barrels bread,	Bread,	50 barrels,	158	53
		Twelve barrels beef,	Beef,	12 barrels,	72	
		Nine do. pork,	Pork,	9 do.	99	
		Four do. hams,	Hams,	448 lbs.	44	80
		One gun carriage and slide,	Carriage,	1,	49	81
		Thirty-two water casks.	W. Casks,	32,	64	
		One box cont. muskets, &c.	Muskets,&c.	1 box,	123	67
		Two barrels whiskey,	Whiskey,	60 galls,	24	
		Thirteen kegs gunpowder,	Gunpowder,	13 kegs,	52	
					687	81

JOHN D. QUINCY,

September 28, 1827—Schooner Bolivar.

DISTRICT OF BALTIMORE,

Port of Baltimore, Sept. 28, 1827.

I, John D. Quincy, do solemnly swear that the within manifest contains a full, just and true account of all articles shipped by me on board the schooner Bolivar, whereof is master John M. Patterson, bound from Baltimore to the West Indies; and that the value of the several articles are truly stated according to their actual cost, or the value which they truly bear at the time and place of their exportation,

and that they are truly intended to be landed at the West Indies.

Sworn to before me, this 28th September, 1827.

J. H. McCULLOCH, *Collector.*

JOHN D. QUINCY.

EXPORT MANIFEST.

Report and Manifest of the cargo, laden at the Port of Baltimore, on board the Schooner Bolivar, John M. Patterson, Master, bound for the Port of St. Thomas, West Indies.

MKS.	NOS.	PACKAGES OR ARTS. IN BULK.	CONTENTS OR QANT.	D.	C.
		Fifty barrels bread,	50 barrels bread,	158	53
		Twelve barrels beef,	12 do. beef,	72	
		Nine do. pork,	9 do. pork,	99	
		Four barrels venison hams,	448 lb. hams,	44	80
		One gun carriage and slide,	1 gun, &c.	49	81
		Thirty-two water casks,	32 water casks,	64	
		One box containing,	31 muskets, 19 sabres, 1 fowling piece,	123	67
		Two barrels whiskey,	60 galls. whiskey,	24	
		Thirteen kegs gunpowder,	13 gunpowder,	52	
				687	81

Tons 65.
Men 7.
Pas. 11
Regt. Baltimore
GEO. STILES,

JOHN M. PATTERSON.
United States.

Wood all, value			$64
Beef	bbls.	12	72
Pork	"	9	99
Bread	"	50	159
Spirits fr. gn.	gal.	60	24
Iron, &c. val.			174
Gunpowder,	325 lb.		52
Raw value,			45
			$689

District of

I, John M. Patterson, Master or Commander of the Schooner Bolivar, bound from the Port of Balti-

more to the West Indies, do solemnly, sincerely and truly swear that the manifest of the cargo on board said Schooner, now delivered by me to the collector of this District, and subscribed with my name, contains according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares and merchandise, now actually on board the said vessel, and of the value thereof, and if any other goods, wares, or merchandise shall be laden or put on board the said Schooner, previous to her sailing from this port, I will immediately report the same to the Collector. I do also swear that I verily believe the duties on all the foreign merchandise therein specified, have been paid or secured according to law, and that no part thereof is intended to be relanded within the United States, and that if by distress or other unavoidable accident, it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the District wherein such distress or accident may happen, so help me God.

Sworn the 28th day of September, 1827.

JOHN M. PATTERSON.

Before,

JAS. H. MCCULLOCH, *Collector.*

Know all men by these presents, that we John M. Patterson, Master, George Stiles owner, and Victor Valette of Baltimore, State of Maryland, owner of the armed Schooner Bolivar of Baltimore, a vessel of the United States, mounting thirty-one muskets, and navigated with seven men, are held and firmly bound unto the United States of America in the sum of Five Thousand Five Hundred dollars

being double the value of the said Schooner and Cargo on board, including her armament, for the payment whereof, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals; dated this 28th day of September, in the 52d year of the independence of the United States, 1827.

The condition of the above obligation is such, that if the above named Schooner shall not be employed by such owners, in cruising or committing hostilities, or in aiding or co-operating in any warlike measure against the subjects, citizens or property of any Prince or state, or of any colony, district or people, with whom the United States are at peace, the above obligation shall be void, otherwise to remain in full force and virtue.

Sealed and delivered in presence of

(Signed,) R. LYON, Jr.

(Signed,) JOHN M. PATTERSON, (Seal.)
GEORGE STELES, (Seal.)
VICTOR VALETTE, (Seal.)

June, 7th, 1830.

I certify the above to be a true copy from the original.

J. H. McCULLOH.

And they further gave in evidence by *Doctor E. H. Merryman,* that the Bolivar sailed from Baltimore as an American merchant vessel, on the 29th September, 1827. Witness had a conversation in Baltimore with Armstrong about going out as surgeon on board the Bolivar, on a cruise under the Buenos Ayrean Flag: That witness had several objects in view in going out in her: Armstrong at

one time told him he was sole owner, and at other times, that others were interested with him; and after she arrived at St. Barts, Armstrong told witness she was sold, and that he owned a part of her. The Bolivar went from Baltimore to St. Thomas, and there was fitted as a Privateer; her outward crew were discharged, and she shipped a new one; she had no equipments when she arrived, but made her equipment at St. Thomas. She there got an 18 pounder, and mounted it on a carriage; that she did not carry any gun out, but took out a gun carriage as cargo; does not know if it was the same upon which the gun was mounted, but if it was, it had been very much altered; it was very unlike the one carried out. The Bolivar was totally equipped at St. Thomas, where she remained two or three weeks; from thence she went to St. Eustatia; after leaving St. Thomas, her name was changed to Las Damas Argentinas; articles were signed by the officers and crew, and her commission exhibited: that witness entered as a surgeon, and Quincy was Captain on the cruise. That Armstrong was on board during the cruise, not as an officer, but as an owner and agent of other owners.

When the Bolivar left Baltimore, there were eighteen persons on board, three men, a cook and steward, Captain Patterson, Mr. Crossman, the mate, and eleven passengers, to wit, H. Armstrong, Capt. Cotterel, Capt. Quincy, George Fishac, Dr. Merryman, Daniel Patterson, Mr. Hewison, W. H. Bates, Geo. Stiles, Dr. Peake and J. D. Buyson: that witness formed no ultimate or fixed determination to go a privateering, until he went to the West Indies; when he went, he knew he might examine

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the country to which he had been directing his attention. Witness conversed with Armstrong about going to the West Indies, that Armstrong told him it was his intention, or rather his wish to employ the Bolivar as a Privateer, but he had no funds to fit her out as such, and could not tell, until he got to the West Indies, what he might ultimately do. Armstrong wanted witness in Baltimore to advance some funds, and told him he would be glad if witness would go as surgeon. He spoke of the difficulty of getting funds, both in Baltimore and in the West Indies. Witness knew that Armstrong had no funds when he arrived in the West Indies, and was two or three days negotiating with Cabot & Co. of St. Thomas, and was uncertain of there getting funds. Witness paid no passage money, but would have done so, if he had not joined the service. During the passage to St. Thomas, there were a great many conversations about past and future cruises, and about the cruise of the Bolivar, and also about the probable compensation to the witness, if he concluded to go as surgeon, after they got to the West Indies.

At St. Thomas four of the passengers quitted the Bolivar; the rest of them joined her as officers. Patterson went in her on the cruise, as Prize Master; two of the original crew from Baltimore re-shipped at St. Thomas. At Baltimore Armstrong told witness, that if the Schooner went on a cruise, Quincy would be captain of her, but cannot say Quincy was Captain on the voyage to St. Thomas; he kept the Log, but Patterson acted as Master. Armstrong told witness, that if they went privateering, it would be under the Buenos Ayrean Flag,

and that he had procured his commission from an agent of the Buenos Ayrean Government at Baltimore or Washington, and paid $800 for it. Witness does not know that any of the passengers paid passage money; and witness knew that Hewison, when he went to the West Indies, had no intention of joining the Bolivar, but did join her after she arrived there. On the outward voyage, there were no flints for the muskets, nor balls nor cartridges; the muskets and sabres were not taken out of the box in which they came on board the Schooner during the voyage, but were all landed at St. Thomas, as was also the powder; witness does not know that the water casks were landed, but they might have been, as he only visited the vessel early in the morning and late in the evening. After her arrival at St. Thomas, he knew that some of the water casks were filled there while at St. Thomas, and powder was brought on board, but witness did not know if it was the same or not with that taken out, and did not see the muskets brought on board again. When he saw the muskets they were taken from the locker, and there were enough of muskets for each officer and man on board; the muskets were sent to Cabot & Co's warehouse to whom the vessel was consigned, and the powder to the Fort in St. Thomas; forty-three or four men were shipped, and they had eleven officers besides. At St. Thomas they bought cannon shot, musket balls, flints, &c. of which there were none on board, on the voyage to St. Thomas; that there the Bolivar was entirely changed, her masts were raked, her pivot for a gun was fitted, cartridges and additional sails were purchased.

On the cruise the crew had cutlasses, which are sharp cutting instruments, without scabbards. Witness believes the Bolivar cleared at St. Thomas for St. Eustatia, as an American vessel: from St. Eustatia they proceeded on a cruise under the command of the Traverser, and under the Buenos Ayrean flag, and captured several vessels, Portuguese, Brazilian and Spanish, which were ordered, in consequence of the blockade of the river La Plata, to the West Indies, in pursuance of instructions from the government of Buenos Ayres. The cruise terminated about the 1st March, 1828; one prize called the Almarante Pacheco and her cargo produced about $35,000, which was distributed among the crew.

A part of the foregoing testimony came out on the cross examination of the witnesses by Traverser's counsel. It was admitted that before the year 1829 ~~1828~~ The United Provinces of Rio de la Plata had been regularly acknowledged as an independent nation, by the executive department of the Government of the United States.

TRAVERSER'S PRAYERS.

Whereupon the Traverser by his counsel moved the Court, for their opinion and direction to the Jury.

THE UNITED STATES
vs.
JOHN D. QUINCY.

1. That if the jury believe, that when the Bolivar left Baltimore, and when she arrived at St. Thomas, and during the voyage from Baltimore to St. Thomas, she was not armed or at all prepared for war, or in a condition to commit hostilities, the verdict must be for the Traverser.

2. That if the Jury believe, that when the Bolivar was fitted and equipped at Baltimore, the owner and equipper intended to go to the West Indies in search of funds with which to arm and equip the said vessel, and had no present intention of using or employing the said vessel as a Privateer, but intended when he equipped her, to go to the West Indies, to endeavour to raise funds to prepare her for a cruise, then the Traverser is not guilty.

3. That if the Jury believe, that when the Bolivar was equipped at Baltimore, and when she left the United States, the equipper had no fixed intention to employ her as a Privateer, but had a wish so to employ her, the fulfilment of which wish depended on his ability to obtain funds in the West Indies, for the purpose of arming and preparing her for war, then the Traverser is not guilty.

4. That according to the evidence in this cause The United Provinces of Rio de la Plata is, and was at the time of the offence alleged in the Indictment, a government acknowledged by the United States, and that The United Provinces of Rio de la Plata is, and then was a state and not a People, within the meaning of the act of Congress under which the Traverser is indicted, the word "People" in that act being intended to describe communities under an existing government, not recognized by the United States, and that the Indictment therefore cannot be supported on this evidence.

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PRAYERS ON THE PART OF THE UNITED STATES.

Whereupon the United States, by the District Attorney, moved the Court for their opinion and direction to the Jury.

THE UNITED STATES
vs.
JOHN D. QUINCY.

1. That if the jury find from the evidence, that the Traverser was, within the District of Maryland, concerned knowingly in the fitting out of the Privateer Bolivar, alias Las Damas Argentinas, with intent that such vessel should be employed in the service of The United Provinces of Rio de la Plata, to commit hostilities, or to cruise and commit hostilities against the subjects, or against the subjects and property of his Imperial Majesty, the constitutional Emperor and perpetual defender of Brazil, with whom the United States were at peace, then the Traverser has been guilty of a violation of the *third* section of the act of Congress of the 20th of April, 1818, which punishes certain offences against the United States; although the jury should further find, that the equipments of the said Privateer were not complete within the United States, and that the cruise did not actually commence until men were recruited, and further equipments were made at the island of St. Thomas in the West Indies; and should further find that the Bolivar, on her voyage from Baltimore to St. Thomas, had no large gun, no flints, nor any cannon or musket balls, and that the muskets and sabres were during the voyage nailed up in boxes.

2. That if the jury find from the evidence, that the Traverser was, within the District of Maryland,

knowingly concerned in the fitting out of the Privateer Bolivar, alias Las Damas Argentinas, with intent that such vessel should be employed in the service of the United Provinces of Rio de la Plata, to commit hostilities, or to cruise and commit hostilities against the subjects, or against the subjects and property of his Imperial Majesty, the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were at peace, then the Traverser has been guilty of a violation of the *third* section of the act of Congress of the 20th of April, 1818, which punishes certain crimes against the United States; although the jury should further find, that the intention so to employ the said vessel was liable to be defeated, by a failure to procure funds in the West Indies, where further equipments were intended and required to be made, before actually commencing the contemplated cruise.

3. That if the jury find from the evidence, that the Traverser was, within the District of Maryland, knowingly concerned in the fitting out of the Privateer Bolivar, alias Las Damas Argentinas, with intent that such vessel should be employed in the service of The United Provinces of Rio de la Plata, to commit hostilities, or to cruise and commit hostilities against the subjects, or against the subjects and property of his Imperial Majesty the constitutional Emperor and perpetual defender of Brazil, with whom the United States then were at peace, then the Traverser has been guilty of a violation of the *third* section of the act of Congress of the 20th of April, 1818, which punishes certain crimes against the United States; although the jury should further find, that the fulfilment of the intention so to

employ the said vessel would have been defeated if further funds had not been obtained in the West Indies, where further equipments were intended and required to be made, before actually commencing the contemplated cruise.

4. That the 12th and 13th counts in the Indictment are good and sufficient in law, whereon to found a conviction, notwithstanding the employment therein of the words "in the service of a foreign people, that is to say" preceding the words "in the service of The United Provinces of Rio de la Plata."

Upon the aforesaid prayers and each of them, the Judges were opposed in opinion.

Thereupon the Court, at the request of the counsel for the Traverser, and the counsel of the United States, ordered the same to be certified by the clerk under the seal of the Court, to the Supreme Court of the United States, at their session to be held at the City of Washington on the second Monday in January next, to be decided by the said Supreme Court; and the Court, being also of opinion that further proceedings could not be had in the said cause without prejudice to the merits of the same, did order that the jury, empanneled as aforesaid to try said cause, be discharged from giving any verdict therein.

In testimony that the aforegoing, &c.

PHILIP MOORE,
Clerk of the Circuit Court U. S.

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THE UNITED STATES, APPELLANT,

VERSUS

DON FERNANDO DE LA MAZA ARREDONDO AND SON, PETITIONERS AND APPELLEES.

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SUPREME COURT OF THE U. STATES.

JANUARY TERM, 1831.

THE UNITED STATES OF AMERICA

VERSUS

DON FERNANDO DE LA MAZA ARREDONDO AND SON.

APPEAL FROM SUPERIOR COURT OF EAST FLORIDA.

BEFORE the Honorable Joseph L. Smith, Judge of the Superior Court for the Eastern District of Florida, and specially authorized by law to receive and adjudicate claims and titles to land in the district of East Florida.

BE IT REMEMBERED, That, on the eleventh day of November, in the year of our Lord one thousand eight hundred and twenty-eight, Fernando de la Maza Arredondo and Son, Peter Mitchel, Moses E. Levy, Jasper Ward, William Thorn, Alexander Muir, and Noah Jarvis, the three last named persons for themselves, and in trust for the "Florida Association of New York," Nathaniel Wells, Elisha Huntington, Ichabod Prall, Nehemiah Brush, Isaac Marquand, and Jeromus Johnson, by their attorneys, brought and filed in the Clerk's office of the Superior Court for the Eastern District of Florida, their petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

To the Honorable the Judge of the Superior Court for the Eastern District of Florida.

The petition of Don Fernando de la Maza Arredondo and Son, and those claiming by deeds regularly executed by them, or their duly constituted agents, to wit: Peter Mitchel, Moses E. Levy, Jasper Ward, William Thorn, Alexander M. Muir, and Noah Jarvis, the three last mentioned persons for themselves, and in trust for the "Florida Association of New York," Nathaniel Wells, Elisha Huntington, Ichabod Prall, Nehemiah Brush, Isaac Marquand, and Jeromus Johnson, who claim by deeds from Nathaniel Wells, of a part of this purchase from the grantees Arredondo and Son, respectfully sheweth:

That your petitioners respectively and severally claim title to an undivided parcel of land, being part of a certain tract containing 289,645, situated in the county of Alachua, in the eastern district of Florida, and within the jurisdiction of this honorable court, about 36 miles west of the river St. John's, and about 52 miles west of the city of St. Augustine, which said tract of land extends four leagues to each point of the compass, in a rectilinear figure, taking as the centre thereof a place called Alachua, formerly inhabited by a tribe of Seminole Indians, but subsequently abandoned by them; that the said tract of land was granted by the Spanish Government, with all the formalities and solemnities used by it in such cases, to your petitioners, on the 22d day of December, 1817, the said grant having been executed at Havana, in the Island of Cuba, by Don Alexander Ramirez, Intendant of the Army, Superintendent General, and Subdelegate of the Royal Exchequer of the Island of Cuba and the two Floridas, &c. &c., by and with the advice and approbation of the Surveyor General of the two Floridas, and of the Minister Fiscal, the King of

Spain's attorney, as by a copy and translation of the said grant and other proceedings, hereunto annexed, reference being thereto had, will more fully and at large appear, (exhibits A and B;) and your petitioners pray that the said exhibits may be taken and received as a part of this their petition.

Your petitioners further show, that the said Peter Mitchel claims title to one undivided fourth part, or 72,411¼ acres, and the said Moses E. Levy to one undivided eighth part, or 36,205 acres, of the said tract of land. That the title of the said Peter Mitchel to the said undivided fourth part is derived by purchase, for a full and valuable consideration, from the original grantees, the said Fernando de la Maza Arredondo and Son, who conveyed the same to your petitioner, the said Peter Mitchel, in fee simple, absolute, on the 21st day of January, 1822, by indenture bearing that date, a copy of which is hereunto annexed, and marked exhibit C, to which the said Peter Mitchel prays leave to refer. That the title of the said Moses E. Levy to the said undivided eighth part is derived by purchase and exchange from and with the said original grantees, as will more fully and at large appear by a reference to hereunto annexed, and marked exhibits D and E, to the originals of which the said Moses E. Levy prays leave to refer, on the hearing of this cause; and the title of your petitioners, Jasper Ward, William Thorn, Alexander M. Muir, Noah Jarvis, for themselves and in trust for others, and Nathaniel Wells, Elisha Huntington, Ichabod Prall, Nehemiah Brush, Isaac Marquand, and Jeromus Johnson, is derived from deeds, duly executed and recorded, from the grantees, Don Fernando de la Maza Arredondo and Son, and by intermediate conveyances from those claiming directly from them, in fee simple; which said deeds, marked E, C, H, I, K, L, M, your petitioners pray may be received

as a part of their petition; and they pray leave to introduce such other and further documentary evidence upon the trial as may be deemed important. And your petitioners further show, that an inducement, among others which operated on the Spanish Government, to the making the said grant to the said F. M. Arredondo and Son, they offered and stipulated, on their application for the said land, to establish on the same 200 families, in the event of the said land being granted to them in full dominion and absolute property; which offer and stipulation, on the part of the said original grantees, were acceded to and accepted by the Spanish Government, and it requiring that the families aforesaid should be Spanish. The aforesaid grant of the said land in absolute property, subject only to the condition that the said grantees should begin their establishment in three years from the date of the said grant, was therefore made as aforesaid.

And your petitioners further show, that, though the settlement of the said lands was begun in or about the months of September or November, 1820, yet the said Fernando de la Maza Arredondo, who was then in Havana aforesaid, ignorant of, and unable to anticipate that fact, and knowing that, anterior to that time, a commencement of the settlement of the said lands had been prevented by the disturbed state of that part of East Florida in which the said lands are situated, and the extreme hazard attending any attempt of the kind, in the month of October, 1820, applied to the aforesaid Don Alexander Ramirez, Intendant of the Army, &c. &c., for a prolongation of one year, within which to commence the settlement of the said land; which prolongation was granted, as will appear by a reference to a decree of the said Don Alexander Ramirez, bearing date the 2d December, 1820, a copy of which is hereto annexed, and marked exhibit D, and to which your

petitioners pray leave to refer to, as a part of this their petition. And your petitioners aver and show unto your honor, that the said original grantees, and your petitioners, and others, the assigns of the original grantees, have well and truly performed the aforementioned condition, of beginning their establishment on the said land within three years from the date of the grant thereof, and the said prolongation of one year, to wit, on or before the end of November, 1820, in a true and bona fide manner, by settling on the said land certain Spanish families and subjects; and afterwards, and before the expiration of the said one year of prolongation, and of the time allowed by the eighth article of the treaty between Spain and the United States, of the 22d February, 1819, by clearing and cultivating said land, building houses thereon, opening roads, and making other improvements of a permanent and beneficial nature, and by settling and establishing on the said lands certain other Spanish families and subjects, and a great number of citizens of the United States, and others, who continue to this time on the said land, cultivating and improving the same. All of which settlements and improvements have been attended with great expense and trouble to your petitioners, as well as to others, the grantees and assigns of the said land.

And your petitioners further aver, that, from the beginning of the year 1818, until the transfer of East Florida to the United States, in the month of July, 1821, the circumstances and situation (which are hereinafter particularly stated and set forth) of that part of the Spanish colony in which the said lands are situated, were such as to entitle the said original grantees and their assigns to the benefit of that part of the provision of the 8th article of the aforesaid treaty which grants and secures to the owners of lands in the territories

ceded by the said treaty an extension of time for the performance of the grants; and your petitioners claim and rely on the same.

And your petitioners, in no wise waiving the alleged performance by them and others, the grantees and their assigns, of the condition annexed to the aforesaid grant, but wholly relying on the same, and on all the benefits and advantages arising therefrom, nevertheless submit to this honorable court, that, if they shall fail to prove the performance, by the said grantees, and your petitioners and others, the assigns of the said grantees, of the condition annexed to the said grant, they have been prevented from so doing by the following causes, which they could in no manner control, and which they offer, and rely upon as an excuse for the non-performance of the said condition, that is to say, that, soon after the making of the said grant, and anterior to the transfer of Florida to the United States, by the Spanish authorities in East Florida, became and were, and continued until the said transfer, altogether unable or unwilling, and they wholly failed to maintain or exercise any authority, power, or government in that part of East Florida in which the said granted lands are situated, or to afford protection to any white population disposed to settle there. That, during that period, numerous and lawless bands of marauding Indians, forced from their own settlements upon that part of the country, by the war between the United States and the Indians, and by the hostile incursion of General Jackson, with the troops of the United States, into Florida, in the year 1818, in the prosecution of that war on the part of the United States, infested every part of the Alachua country, with exasperated and hostile feelings against the whites. That, during that period, the inhabitants who were settled on the west of the river St. John's were obliged to abandon their

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settlements, and to secure their safety against the hostility of the said Indians by removing to the eastward of the said river. That the said state of insecurity and danger from the Indians, and from the unsettled state of the country, arising from other causes, in attempting a settlement in the Alachua country, continued for some time after the transfer of Florida to the United States, and until the Government of the said United States took efficient measures to protect the country by posting troops at various stations. Your petitioners, therefore, charge and insist, that, under such a state of things, it was not practicable for the said grantees, or their assigns, to perform at this period the condition of their said grants, and that they were and are thereby, in law and equity, absolved from the performance of the same.

And your petitioners also submit, that the act of the Spanish Government in ceding, and the act of the Government of the United States in accepting, the cession of East Florida, have rendered it wholly impracticable for the aforesaid grantees or their assigns to introduce and settle on the said granted lands 200 Spanish families, the said act having put it entirely out of the power of the grantee and their assigns to hold out sufficient inducement to Spanish subjects, who in religion are almost universally Catholics, to abandon their own country, and settle in one whose inhabitants, government, laws, customs, and religious institutions, are so foreign and different from those in their own country, as are the inhabitants, laws, customs, and religious institutions, in general, of the United States; even if the laws and usages of Spain, and her provinces, would permit so large an emigration as 200 families to a foreign country, which your petitioners in no wise admit, but, on the contrary, they expressly charge that the laws of Spain and her provinces would not permit such an emigration

to the United States to take place. Your petitioners, therefore, charge and insist that the said original grantees and their assigns have been, by the said act of the government of Spain and the United States, prevented their settling on the said granted lands the Spanish families mentioned in the said grant; and that the said grantees and their assigns are thereby entitled to the benefit of the said grant, discharged of all obligation to settle the said families on the said lands. And your petitioners submit, thirdly, that the United States have failed to ratify and confirm to the said original grantees, or to your petitioners, the aforesaid grant, under which your petitioners claim title to the said lands, to the extent to which the said grant would have been valid if East Florida had remained under the dominion of his Catholic Majesty, according to the true intent and meaning of the eighth article of the aforementioned treaty between Spain and the United States, in consequence of which the said original grantees, and your petitioners and others, the assigns of the said original grantees, could not, nor could any of them, safely proceed to the settlement of the said granted lands, nor could they safely exercise those acts of ownership over the said lands, or use or dispose of them in that ample and beneficial manner, authorized by the terms of the said grant, and necessary to enable them to promote the settlement thereon, which they could and would have done had the said grant been ratified and confirmed as aforesaid. Your petitioners, therefore, insist and charge that they and the said original grantees have, by the said omission on the part of the United States to ratify and confirm the said grant, been prevented, since the transfer of Florida to the United States, from proceeding to establish settlements on the said granted lands.

And your petitioners further show unto your honor, that the claims of your petitioners to the said lands have been submit-

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ted to the examination of the Board of Commissioners appointed under and in virtue of an act of Congress of the United States, entitled "An act amending and supplementary to the act for ascertaining claims and titles to lands in the Territory of Florida, and to provide for the survey and disposal of the public lands in Florida," passed the 3d day of March, 1823, and have been by the said Commissioners recommended for confirmation; which said report, and the evidence taken before the said Board of Commissioners, in support of your petitioners' claim, marked O, all of which are attached to this petition, and prayed to be taken as exhibits in this case. That the lands so claimed by your petitioners, and situated as aforesaid within the Territory of Florida, are embraced by the treaty between Spain and the United States of the 22d of February, 1819. That their claims thereto have not been decided or finally settled under the provisions of the act of Congress of the United States entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," passed the 23d of May, 1828, or of any of the acts to which the said last recited act is supplementary. That the several and respective claims of your petitioners do each contain a greater quantity of land than the Commissioners appointed under the said acts were authorized to decide, and above the amount confirmed by the afore-recited act of Congress, passed the 23d of May, 1828; and that the said claims of your petitioners for the said lands have not been reported by the Commissioners appointed under any of the aforesaid acts, or any other, or by the Register and Receiver, acting as such, under the several acts of the Congress of the United States in that case made and provided, as antedated or forged.

Wherefore, your petitioners pray that the validity of their respective titles to the said land so severally and respectively

claimed by them as aforesaid, may be inquired into and decided upon by this honorable court; and that, in pursuance of an act of Congress for that purpose, in that case made and provided, and the United States of America be made a party defendant to this petition, and that process in this behalf do forthwith issue against Thomas Douglass, the attorney for the United States in this district, according to the provisions of the said act of Congress above alluded to. And your petitioners, as in duty bound, will ever pray.

JOHN RODMAN,
JOHN M. BERRIEN,
JOS. M. WHITE,
JOHN DRYSDALE,
B. A. PUTNAM.
Attorneys for the petitioners.

A copy of the above petition, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the attorney of the United States for this district; and the return of the said marshal is in the words and figures following, to wit: "Executed by giving a copy to Thomas Douglass, Esq. district attorney, 10th January, 1829."

"WATERS SMITH, *Marshal.*"

And afterwards, to wit, on the twenty-third day of January, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglass, Esquire, United States attorney for the district of East Florida, brought and filed in the Clerk's office aforesaid his answer to the said petition; which said answer is in the words and figures following, to wit:

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Superior Court, May Term, 1829.

THE UNITED STATES OF AMERICA
ads.
DON FERNANDO DE LA MAZA ARREDONDO AND SON, AND OTHERS. } *Petition in Chancery.*

The answer of Thomas Douglass, United States attorney for the district of East Florida, to the petition (or bill of complaint) of Don Fernando de la Maza Arredondo and Son, Peter Mitchel, Moses E. Levy, Jasper Ward, William Thorn, Alexander Muir, and Noah Jarvis, the three last persons for themselves and in trust for the "Florida Association of New York," Nathaniel Wells, Elisha Huntington, Ichabod Prall, Nehemiah Brush, Isaac Marquand, and Jeromus Johnson.

The said attorney, in the name and for and on behalf of the said United States, saving and reserving to himself all and all manner of benefit of exception to the manifold errors, uncertainties, and irregularities, in the said petition (or bill of complaint) contained, for answer thereunto, as to so much thereof as it is material and necessary for the said United States to answer unto, answereth and saith:

That, as to whether the said tract of land in the said petitioners' said bill of complaint mentioned and described was or was not granted by the Spanish Government to Fernando de la Maza Arredondo and Son, with all the formalities and solemnities used by it in such cases, as therein alleged and set forth, and whether the said conveyances, in the said bill of complaint alleged to have been made by the said Fernando de la Maza Arredondo and Son (one) to the said Peter Mitchel for one undivided fourth part, or 72,411¼ acres, and (the other) to the said Moses E. Levy for one undivided eighth part, or 36,205 acres, of the said tract of land, were or not made and executed at the time and in manner and form as is in the

said petition alleged and set forth, and as to whether the title of the said petitioners, Jasper Ward, William Thorn, Alexander M. Muir, Noah Jarvis, for themselves and in trust for others, and Nathaniel Wells, Elisha Huntington, Ichabod Prall, Nehemiah Brush, Isaac Marquand, Jeromus Johnson, James Suydam, and Thomas C. Doremus, is derived from deeds, duly executed and recorded, from the said Fernando de la Maza Arredondo and Son, and by intermediate conveyances from those claiming directly from them, or whether the said petitioners, or either of them, have any title at all to the said land, or any part thereof, and of the several exhibits to the said petition annexed, this respondent has no knowledge, except what he has derived from an examination of the petition and exhibits aforesaid, and cannot therefore either admit or deny the same, but respectfully prays that this honorable court would require of the said petitioners due proof, according to law and the usages of courts of equity, of the making and execution of the said grant, deeds, and conveyances, and of the matters and things therein contained, and in the said bill thereof alleged and set forth.

And this respondent submits to this honorable court, that, if the said grant was made and executed by the said Don Alexander Ramirez, Intendant, &c. of the island of Cuba, to the said Fernando de la Maza Arredondo and Son, at the time and in the manner as is in the said bill of complaint alleged, which he by no means admits, that then, in that case, the said Don Alexander Ramirez, Intendant, &c., exceeded, in making the said grant, the powers which had been conferred upon him by the Spanish Government aforesaid; and avers that no power had been conferred upon the said Intendant, by the said Government, to make grants of land in Florida of the magnitude and description of the one claimed, set forth, and described in the said bill of complaint; and that, if such grant

was made by the said Intendant, it was made contrary to, and in violation of, the laws, ordinances, and royal regulations of said Government of Spain, providing for the granting of land in its provinces, (of which said provinces, the said East Florida was one—all of which will more fully appear by reference to the said laws, ordinances, and royal regulations, which this respondent now here prays leave to introduce and read on the hearing of the cause,) and was never approved by the king of Spain, without whose approval it was wholly null and void. And this respondent, without in any manner admitting the making of the said grant as aforesaid, farther avers, that, if it was so made by the Spanish Government to the said Fernando de la Maza Arredondo and Son, at the time and in manner and form as the said petitioners have, in their bill of complaint aforesaid, alleged, it was made upon the precise obligation and express condition of their (that is, the said Fernando de la Maza Arredondo and Son) binding themselves to establish there, to wit, on the said tract of land, two hundred Spanish families, with all the requisites which were pointed out to them, and the others which were to be pointed out to them, by the Superintendency, &c., on their, to wit, the said Fernando de la Maza Arredondo's and Son's beginning their establishment on the said tract of land within three years, at most, from the date of said grant, without which the said grant was to be considered null and void; which condition, the said Fernando de la Maza Arredondo and Son then and there accepted, and engaged to perform. And this respondent further avers, that the said Fernando de la Maza Arredondo and Son did not commence their said establishment on the said tract of land within the said three years; and that they have not established on the said land two hundred Spanish families, according to their said engagement, but have wholly failed so to do; and,

farther, that the aforesaid condition and obligation has not been complied with and fulfilled, either by the said Fernando de la Maza Arredondo and Son, or by any other person or persons in their behalf, nor by the said petitioners; so far from it, that the said Fernando de la Maza Arredondo and Son, after the time when the said grant is supposed to have been made as aforesaid, and without having in any manner complied with the condition thereof, did remove their family from the said province of East Florida to the island of Cuba aforesaid, then and still one of the dependencies of the crown of Spain, to wit, after the cession and transfer of the said province to the said United States, and did then totally abandon the said tract of land. And this respondent further avers, that, if the said grant was made as is alleged in said bill, and upon the condition above mentioned, the performance of the said condition was a matter of special trust and confidence reposed by the said Spanish Government in the said Fernando de la Maza Arredondo and Son, which could not have been delegated by them to any other person or persons; and that the sale and conveyance of said tract of land, or of parts thereof, to the said petitioners, by the said Fernando de la Maza Arredondo and Son, in manner and form as is in said bill alleged, without having first performed the said condition, was a violation of the special trust and confidence so reposed in them as aforesaid, and rendered the said grant, (if any such was ever made,) by the laws then in force in East Florida, entirely null and void; and this respondent denies that the said Fernando de la Maza Arredondo and Son were prevented from a compliance with and performance of the condition of the said supposed grant by any such causes as are, in the said bill of complaint, by the said petitioners, alleged and set forth, or that such difficulties at any time existed in relation to the making of the

said settlement as is in the said petition charged: and this respondent avers that it would have been perfectly practicable, with due and reasonable exertion, to have proceeded with the establishment and location of the said two hundred families on the said tract of land, at any time after the period when said grant is alleged to have been made; and that no circumstances have at any time since that period existed, which could have entitled the said Fernando de la Maza Arredondo and Son, or the said petitioners, to the benefit of the 8th article of the treaty in said bill of complaint mentioned; and that, if any of the said parties ever were thus entitled, they each and all of them wholly failed to comply with said condition during the extension of time given by said treaty; and, farther, that, if any such grant of further time was given by the said Intendant, &c. to the said Fernando de la Maza Arredondo and Son, for the performance of the said obligation, as is mentioned in the said petition, and referred to as exhibit D, thereunto annexed, such grant was rendered null and void by the latter clause of the said 8th article of the aforementioned treaty; and submits that, if it had not been thus rendered null and void, the said Fernando de la Maza Arredondo and Son, and all persons claiming any interest in the said land through them, entirely failed to avail themselves of the benefit intended to have been conferred thereby. And this respondent denies that the said petitioners are, by the circumstances by them thereunto alleged, stated, and set forth, or by any other circumstances whatever, absolved from the performance and fulfilment of the said condition and obligation, or that they, or either of them, are entitled to hold the said tract of land, or any part thereof, discharged from the said condition or obligation. And this respondent farther avers, that, if the said grant was made to the said Fernando de la Maza Arredondo and Son in manner and form as is

stated in said petition, (which is not admitted,) it was expressly made, and understood to be, without *prejudice* to a *third person*, and especially without prejudice to the native Indians of that soil, who might then have returned, or who might wish to return, to establish themselves there again; and, that after the time when the said grant is alleged to have been made as aforesaid, such of the said native Indians of that soil as were then absent, or some of them, did return, and, together with others of them, who were already there, wished to and did establish themselves upon the said tract of land. And this respondent avers that the right and title to the said tract of land was, previous to, and at the time when the said grant is alleged, by the said petitioners, to have been made as aforesaid, vested in the Florida tribes of Indians, who, previously, had, and then did claim, title thereto, and occupy the same in their customary manner, as their circumstances required; and that the said native Indians formed a part of the said Florida tribes: and, farther, that the said claim, title, and occupancy of the aforesaid Indians, constituted the only real obstacle (if any existed) to the location and settlement of the said two hundred Spanish families on the said tract of land; and that the said claim, title, and occupancy of the said Indians was a matter of public notoriety, and could not have been unknown to the said Fernando de la Maza Arredondo and Son at the time when said grant is alleged to have been made as aforesaid. And this respondent farther saith, that the said claim and title of the said Indians to the said tract of land was not extinguished until the eighteenth day of September, in the year of our Lord one thousand eight hundred and twenty-three; on which day, a certain talk was held at a place called Moultrie, in East Florida aforesaid, by and between William P. Duval, James Gadsden, and Bernado Segui, Commis-

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sioners for and on behalf of the said United States, and certain chiefs and warriors of the said Florida tribes of Indians, on the part and behalf of the said tribes, at which said talk a a treaty was made by and between the said United States and the said Florida tribes of Indians; by the first article of which, the said chiefs and warriors, for themselves and their tribes, in consideration of the promises and stipulations in said treaty thereafter referred to, did cede and relinquish (to the same United States) all claim or title which they had to the whole Territory of Florida, with the exception of such district of country as should therein be allotted to them; and this respondent saith, that the aforesaid tract of land was embraced in, and formed a part of, the lands ceded to the said United States by virtue of the said treaty, and that it was not included in the district of country thereby allotted to the said Indians; all of which will more fully appear by reference to the said treaty, which this respondent prays leave to introduce and read at the hearing of this cause. And this respondent submits that, by the laws, ordinances, and royal regulations of the said Government of Spain, which were in force in the province of East Florida at the time when the said grant is alleged to have been made, it was provided that the distribution of lands should be made with equity, and without any distinction or preference of persons, or injury to the Indians; and that it was therein and thereby especially provided and commanded, that the lands which might be granted to *Spanish* should be without prejudice to the Indians, and that those granted to the injury of the Indians should be restored to their rightful owners; all of which will more fully appear by reference to the said laws, ordinances, and royal regulations, to all which this respondent prays leave to refer, and read on the hearing of this cause. And this respondent farther avers,

that the said Fernando de la Maza Arredondo and Son were, at the time when said grant is alleged to have been made as aforesaid, and still are, *Spaniards*, and subjects of the Government of Spain, and that said grant of the said tract of land (if any such was ever made, as is in said petition stated) to the said Fernando de la Maza Arredondo and Son was made to the prejudice and injury of the said Florida tribes of Indians. And the said respondent says, that the said United States claim title to the said tract of land by virtue of the second article of the treaty "of amity, settlement, and limits, between the same United States and his Catholic Majesty, which was made, concluded, and signed, between their plenipotentiaries, at the city of Washington, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, and which was accepted, ratified, and confirmed by the President of the same United States, by and with the advice and consent of the Senate thereof, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and twenty-one, by which his Catholic Majesty ceded to the said United States, in full property and sovereignty, all the territories which then belonged to him, situated to the eastward of the Mississippi, known by the name of East and West Florida, in which said East Florida the said tract of land is situate; and, also, by virtue of the treaty first above mentioned, which was accepted, ratified, and confirmed by the President aforesaid, by and with the advice and consent of the Senate aforesaid, on the second day of January, in the year of our Lord one thousand eight hundred and twenty-four, to which he also begs leave to refer, and read on the hearing of this cause.

And now, having fully answered all the matters and things in the said petition or bill of complaint alleged, contained,

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and set forth, the said attorney prays that the said United States may be hence dismissed, and that their reasonable costs and charges, by them, in and about the defence of this suit, paid, laid out, and expended, may be adjudged and decreed to them, &c.

THOMAS DOUGLASS, *U. S. Att'y, &c.*

And afterwards, to wit, on the tenth day of July, in the year of our Lord one thousand eight hundred and twenty-nine, the said Thomas Douglass, United States' attorney as aforesaid, brought, and filed in the Clerk's office aforesaid, an amendment to the foregoing answer; which is in the words and figures following, to wit:

Superior Court, May term, 1829.

UNITED STATES OF AMERICA
ads.
F. M. ARREDONDO AND SON, AND OTHERS.

The answer in the above stated case is amended by adding the following sentences thereto, which are to be inserted therein:

And this respondent farther avers, that, if any such grant of further time was given by the said Don Alexander Ramirez, Intendant, &c., as aforesaid, to the said Fernando de la Maza Arredondo and Son, to perform the conditions of the said supposed grant, as is mentioned and set forth in exhibit D, to the said petition or bill of complaint annexed, the said grant of further time was equivalent to a new grant for the said lands, and that it was made contrary to, and in violation of, the aforesaid laws, ordinances, and royal regulations, and without any power or authority on the part of the said Don Alexander Ramirez, Intendant, &c., as aforesaid, to make it; and that, if the said Don Alexander Ramirez, Intendant, &c., as aforesaid, had been invested by the said Spanish Government

with competent power and authority to make grants of land in Florida of the magnitude and description of the one now claimed and described by the petitioners aforesaid, in their said petition or bill of complaint, the said grant of farther time aforesaid was made since the twenty-fourth day of January, one thousand eight hundred and eighteen, as appears by the showing of the petitioners themselves, and was and is rendered wholly null and void by the provisions of the latter clause of the eighth article of the aforementioned treaty. And this respondent farther avers, that, if the aforesaid grant itself was made as is in the said petition or bill of complaint alleged, and the said Don Alexander Ramirez had been invested by the said Spanish Government with competent power and authority to make it, the express condition aforesaid, upon which it was made, was the act of a sovereign, and that it was not a matter for judicial inquiry whether any circumstances had occurred to excuse a compliance with those conditions; but that it was competent only to the sovereign who had imposed the said conditions to release them, or to excuse a non-compliance with them; and now, to the sovereign power alone of the said United States, who have taken, under the said treaty, the place of Spain, does the authority rest to decide whether any circumstances have occurred to excuse a non-compliance with those conditions, or to release them. And this respondent farther saith, that, if any such grant of the said lands was made as aforesaid, which is not admitted, the said Fernando de la Maza Arredondo and Son wrongfully represented to the said Alexander Ramirez, Intendant, &c., as aforesaid, in order to obtain it, that the said lands had been abandoned by the said Indians, and were vacant. And this respondent farther avers, that it was in consequence of the said false, fraudulent, and wrongful representations of the said Fernando de la Maza Arredondo and Son, that he, the said

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Don Alexander Ramirez, Intendant, &c., as aforesaid, declared the said lands to be crown lands, and granted them to the said Fernando de la Maza Arredondo and Son, if, indeed, the said supposed grant to them was ever made as aforesaid, which is not admitted; whereas, in truth, and in fact, the said lands were not vacant, nor abandoned by the said Indians, but that, on the contrary, the said Indians had constantly been, and still were, possessed of the said lands, at the date of the said supposed grant, and that they had continually occupied the same, and had never left the said lands, unless they were driven off by a superior and lawless force, and then only temporarily; and, therefore, if the said grant was made, as is alleged in the said petition or bill of complaint, and the said Don Alexander Ramirez, Intendant, &c., as aforesaid, had been and was invested, by the Spanish Government aforesaid, with competent power and authority to make the same, it was fraudulently and surreptitiously obtained, by imposing on the said Don Alexander Ramirez, Intendant, &c., as aforesaid, a false representation of facts; and, as it might have been cancelled by the King of Spain on that ground, so it might now be cancelled by the sovereign authority of the United States, and that Court of Equity cannot, consistently with the principles which govern that tribunal, lend its aid to give effect to a grant obtained by fraud and misrepresentation. And this respondent farther prays this honorable court, that the said petitioners may be required to show and prove, on the hearing of this cause, the specific power and authority which had been conferred, (if any such power had been conferred,) by the Spanish Government, upon the said Don Alexander Ramirez, Intendant, &c., as aforesaid, at the time when the said supposed grant is alleged to have been made as aforesaid, to make grants of land in East Florida, and, particu-

larly, that they may be required to show and prove the specific power under which he claimed to act in making the said supposed grant of lands, and also the said grant of further time for the performance of the aforesaid conditions, if, indeed, any such grants were ever made by him, which is not admitted. And this respondent farther saith, that the said Fernando de la Maza Arredondo and Son, nor their families, ever resided on the said tract of land, either before or since the time when the said supposed grant is alleged to have been made; nor did the said Don Vincente Pintado, of whom mention is made in exhibit A, to the said petition or bill of complaint annexed, ever go upon the said tract of land, or ever visit the province of East Florida, so as to enable himself to make the report in the said exhibit A alluded to, with propriety and correctness.

THOMAS DOUGLASS,
United States Attorney, &c.

And afterwards, to wit, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and twenty-nine, the said Fernando M. Arredondo and Son, and others, by their attorneys, brought, and filed in the Clerk's office aforesaid, their replication; which is in the words and figures following, to wit:

Superior Court for the District of East Florida.

F. M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES.

The replication of F. M. Arredondo and others, to the answer of Thomas Douglass, Esquire, attorney for the United States, defendant.

And these replicants, saving and reserving to themselves all and all manner of advantage of exception, which may be had and

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taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendant, and the amendment thereto filed, for replication thereunto say, that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant; and that the answer and amendment thereto are very uncertain, evasive, and insufficient in the law to be replied unto by these replicants without that; that any other matter or thing in the said answer and amendment contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these replicants are ready to aver, maintain, and prove, as this honorable court shall direct; and humbly pray, as in and by their said bill they have already prayed.

JOHN RODMAN,
JOHN DRYSDALE, and others,
Atty's for petitioners.

ST. AUGUSTINE, *July* 14, 1829.

And afterwards, before the Superior Court for the Eastern District of Florida, holden at the court-house in the city of St. Augustine, at the term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to which term this cause had come by regular continuance, to wit, on Wednesday, the third day of said term, and the fourth of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES.
} *Land claim.*

The petitioners, by their counsel, came into court, and proved by witnesses the death of Francis P. Sanchez, William T. Hall, and Samuel Ayres, who were witnesses in the above named suit before the Commissioners for ascertaining

claims and titles to lands in the district of East Florida, before the filing the petition herein. The said petitioners further proved to the satisfaction of the court, that Hepolita Chavineuf, Nehemiah Brush, Elisha Huntington, Mordecai Myers, Legrand Jarvis, Thomas C. Doremus, John West, and John M. Lowry, whose testimony was taken before the Board of Commissioners for ascertaining claims and titles to land in East Florida, are not now within the reach of the process of this court. It is admitted by the counsel of the claimants, that Nehemiah Brush, Noah Jarvis, and Elisha Huntington, whose testimony was taken by the Commissioners, and who are now proved to be beyond the reach of the process of the court, are the same persons now petitioners in the above suit. George J. F. Clark, William H. Simmons, and Waters Smith, sworn as witnesses on behalf of the petitioners, and their testimony taken.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Saturday, the sixth day of said term, and the seventh of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES.
} *Land claim.*

The petitioners in the above suit introduced and read in evidence the report of the Secretary of the Treasury, dated February 21st, 1825, showing that the above claim was presented in due time to the Commissioners for ascertaining claims and titles to lands in East Florida, and by them reported, with a recommendation for confirmation of said claim, by the Government of the United States, to the respective claimants before said Board. They also exhibited the report of the Commissioners, as aforesaid, showing an order of said

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Board, that the testimony taken in the claim of Moses E. Levy, one of the claimants, was ordered to be received and admitted; and it was so received and admitted, in the consideration and decision of the claim of F M. Arredondo and Son, as evidence. The said petitioners then proved by witnesses, that Frederick S. Warburg, Legrand Jarvis, and Elisha Huntington, whose testimony was taken before the Board of Commissioners for ascertaining claims and titles to lands in East Florida, are not now, nor have been within the reach of the court's process since the filing of the said petitioners' petition in this court. The said petitioners then offered in evidence the mesne conveyances from Arredondo and Son to Moses E. Levy, and the same to Peter Mitchel; which were received in evidence without objection by the attorney of the United States.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Monday the seventh day of the said term, and the ninth of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came as well the claimants by their counsel, as the defendant by its counsel; and the defendant moved the court that this cause be continued till the next term, and that a general commission be awarded them to take testimony on behalf of the said defendants; which motion for a continuance was duly argued, but the court, not being sufficiently advised of and concerning the premises, took time to consider.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to

wit, on Wednesday, the ninth day of said term, and the eleventh of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their attorneys; and the court, now being sufficiently advised of and concerning the motion of the defendant for a continuance in this cause, without cause shown on affidavit, overrules said motion.

And afterwards, at the said term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Thursday, the tenth day of the said term, and the twelfth of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their attorneys; whereupon, the Law Agent of the United States for Florida made and filed affidavit, alleging causes for the continuance of this cause; but the court, not being sufficiently advised, took time to consider.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Friday, the eleventh day of the said term, and the thirteenth of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their attorneys; whereupon, the attorney of the United States for the district of East Flo-

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rida made and filed affidavit, alleging causes for the continuance of this cause; but the court, not being sufficiently advised, took time to consider.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Saturday, the twelfth day of the said term, and the fourteenth of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came as well the claimants by their attorneys, as the defendant by its attorneys, and the court, now being sufficiently advised of and concerning the motion of the defendant for a continuation of the said cause, on the affidavits filed by the Law Agent of the United States for Florida, and of the Attorney of the United States for this district, alleging causes for the continuance of this cause, overrules the said motion, and orders a trial herein.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Monday, the thirteenth day of said term, and the sixteenth of said month, the following entries appear of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came as well the claimants by their counsel, as the said defendant by its counsel, and this cause came on for hearing; and the petition, answer, amended answer, and replication, filed herein, having been read to the court, the petitioners offered in evidence the following documents, to wit:

first, the original grant; a translation of which, made by the translator and interpreter of this court, is as follows, to wit:

Don Alexander Ramirez, Intendant of the Army, and Subdelegate Superintendent General of the Royal Domain of the Island of Cuba and the two Floridas, President of the Tribunal of Accounts and of the Board of Tythes, Superintendent of the Department of the Crusades, Judge Particular of vessels putting in port by stress of weather, and Protector of the Royal Lottery, Superior Chief and Inspector of the Royal Factory of Segars, &c.

Whereas Don Fernando de la Maza Arredondo and Son, merchants of this city, have presented a memorial to this Intendancy General and Subdelegate, of the twelfth of November last, in which they pretend to obtain, as a gratuitous grant, a lot of land in East Florida, where they have been established, and where still remains the greater part of their family, and a great deal of their property, offering to form an establishment in the territory known under the name of Alachua, as it is adapted to the growing of cattle and the culture of provisions; said establishment to be composed of two hundred families, which they are to convey at their own costs, proposing other advantages which will result not only in favor of the other inhabitants already established, and residents of the city of St. Augustine, but also in favor of the Creek and Seminole Indians living on the borders of that country, provided they obtain in absolute property the said grant limited to four leagues of land to every point of the compass, fixing as the central point thereof the indicated tract of Alachua. And the said memorial having passed, by my decree of the twelfth instant, to the Captain of infantry, Don Vincente Sabastian Pintado, Surveyor General of the two Floridas, for his information, which he gave on the fifteenth of the same month, with all the necessary information and solid reasons which

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demonstrate and make known the convenience and utility of providing for the increase of population in said province, without expense to the royal treasury, and of accepting the offers of the interested parties, on account of the importance of the undertaking, and of the considerable disbursements which they will have to make to carry the same into effect. In consequence thereof, by a decree of the same day, the subject was communicated to the Auditor Fiscal of the Royal Domain, who, in his representations of the seventeenth, founded on the sovereign disposition concerning the increase of population in those possessions of his Majesty, supported the pretensions of Maza Arredondo and Son, gave his consent in order that the land which they solicit be granted to them in the terms they propose. Wherefore, on the day of yesterday, I provided the act which follows: Seen. In virtue of the royal order of the third of September, in this year, by which, in appointing me Superintendent of the two Floridas, his Majesty commands me, in express terms, to provide for the increase of population in those provinces by every means which my prudence and zeal may dictate, with the concurrence of his Lordship the Fiscal, and with the report of the Surveyor General of the said province, the tract called Alachua, in East Florida, is declared to belong to the royal domain. In consequence whereof, and in attention of the notorious integrity and fidelity, to the known capital and other good qualities of Don Fernando de la Maza Arredondo and Son, I grant to them the part which they solicit of the said tract belonging to the royal domain, in conformity to the sovereign dispositions on this matter, and with the precise condition to which they obligate themselves to establish thereon two hundred families, which ought to be Spanish, with all the requisites which are provided for, and others which will be provided by this Superintendency, in virtue of the said royal order; the said establishment to begin

to be carried into effect in the term of three years, at farthest, without which this grant will be null and void; said grant is also understood to be made without prejudice to a third party, and especially to the Indians, natives of that land, who may have returned, or may pretend to return, to make there their plantations. Let this expedient pass to the Surveyor General above mentioned, in order that he may make the corresponding plot, in conformity to his information, and the granted extent of four leagues to every wind in a rectilineal figure, with all possible perspicuity, to avoid future doubts and litigations; which being done, let the title in form be executed, with the same plot annexed thereto, a copy of which will remain in the expedient, with the provision that the said three years allowed to commence the establishment of families are to run and be counted from this date; and that, on the first families being prepared and disposed, the grantees will give notice of it, together with a list of the individuals, and mention made of the places of which they are natives, of their occupation, in order that the orders and instructions which the Government and the Superintendency of the Royal Domain in East Florida may see fit to give, be issued, and in order that an account of the whole be given in proper time to his Majesty.

The figurative plan formed by the Surveyor General aforesaid being presented, with the explanation which, in continuation, he gave of the survey and demarcation, it results that the tract of land is situated in East Florida, fifty-two miles, more or less, distant west from the city of St. Augustine, and about thirty-six miles west of the western margin of the river St. John's; bounded on every side by vacant lands, the place known by the name of Alachua being towards the centre, which place was formerly inhabited by a tribe of the Seminole nation, which abandoned it; and according to the

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dimensions and form which were given to the tract in said plot, and the report annexed to it, it is specified that, as the leagues used in that province are equal to three English miles, containing each one thousand seven hundred and sixty yards, or eighty chains of Gunter, the space granted contains two hundred and eighty-nine thousand six hundred and forty-five English acres, and five-sevenths of an acre, equal to three hundred and forty-two thousand two hundred and fifty *arpents*, and one-seventh of an *arpent*, a measure used in West Florida, and counting for an English acre one hundred and sixty perches and sixteen and a half feet, London measure, to a lineal perch as used in the time of the British dominion, and tolerated since by our Government. Wherefore, in the exercise of the faculties which have been conferred upon me by the King our lord, whom may God preserve, and in his royal name, I do grant, gratuitously, to the said Don Fernando de la Maza Arredondo and Son, the number of acres of land as above stated, under the limits, courses, and distances, pointed out in the figurative plot, a copy of which will be annexed to this title, in order that they may possess the same as their own property, and enjoy it as the exclusive owners thereof, and in the terms exposed in my decree inserted in it.

In testimony whereof, I have ordered the execution of this title, signed before me, and sealed with the royal seal used in my office, and countersigned by the Commissary of War, Don Pedro Carambot, his Majesty's Secretary of this Intendancy and of the Subdelegate Superintendency General. Given in the Havana, on the twenty-second of December, one thousand eight hundred and seventeen.

[L. S.] ALEXANDRO RAMIREZ

PETER CARAMBOT.

An account of the preceding title has been taken and registered in the book prepared for that purpose in the Secretary's office under my charge. Havana, date as above.

CARAMBOT.

The said claimants then offered in evidence the following royal order, which is contained in the report of the Secretary of the Treasury to Congress, dated 20th May, 1824, and is found at page 33 of the 11th volume State Papers, and is also found in Clarke's edition of Land Laws, page 1011, and is in the words and figures following, to wit:

The following royal order invests the Superintendent of the Island of Cuba with the superintendency of the two Floridas, and makes it his especial duty to advance the population and settlements of those provinces by all means in their power. Among them he has exercised the power of making grants of land, upon the condition of bringing an actual population upon them.

TRANSLATION.

Seal the 3d, 10 S. Reals [L.S.] for the years 1822 and 1823.

Don Juan Nepomuceno de Arrocha, Honorary Comptroller of the Army, and Secretary of the Intendancy of the Public Finance of this island and that of Puerto Rico.

I do hereby certify, that, in compliance with the decree of the seventh of this month, of the Superintendent Don Francisco Javier Ambari, made at the petition of Don Fernando de la Maza Arredondo, of the 4th instant, and filed in the Secretary's office under my charge, exists the royal order of the following tenor.

His Majesty, understanding by the letters of your lordship of the 14th and 18th of August, and 21st of October, of the year last past, No. 18, 28, and 107, of the resolution concluded with the Captain General of that island, to regulate all

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that appertains to the branch of the royal finance, and to attend to the protection and advancement of the two Floridas; and having conformed himself with the advice given by the Supreme Council of the Indies, in their deliberations held on the 11th August last, his Majesty has been pleased to approve, for the present, all which has been done with respect to the regulations of said branch, as also the supplies administered by the Board of Royal Finance for the payment of the regiment of Louisiana, and other indispensable expenditures for the fortifications and defence of the cities of St. Augustine and Pensacola, authorizing your lordship, in case of necessity, to aid or supply them. His Majesty, likewise, has determined, for the present, the superintendency of the two Floridas in favor of your lordship, as Superintendent of the island of Cuba: and, lastly, his Majesty has been pleased to command to inform your lordship, as I now do, that you facilitate the increase of the population of those provinces, by all means which your prudence and zeal can dictate, informing, as soon as possible, the motives for the absence of Don Juan Miguel de Losadas and Don Manuel Gonzalez Almirez, from their offices.

All which I communicate to your lordship by royal order, and for your intelligence and compliance thereof. God preserve your lordship many years.

GARAY.

MADRID, *3d September*, 1817.

To the Intendant of Havana.

HAVANA, 10*th October*, 1823.

JUAN NEPOMUCENO DE ARROCHA.

A true and correct translation.

F. J. FATIO, *S. B. L. C.*

The said claimants then offered in evidence the following documents, found in White's Compilation, pages 156–7, and

numbered 16 and 17, which said documents are in the words and figures following, to wit:

TRANSLATION.

No. 16.

From Señor Don José Fuertes, Intendant pro tem., advising his having delivered the command to Señor Don Alex'o Ramirez, chosen by his Majesty.

HABANO, *3d July*, 1816.

The King, our master, having been pleased to confer on Señor Don Alexander Ramirez, by a royal commission of the 5th of October of the year last past, the posts of Intendant of the Army, Superintendent General Subdelegate of the royal domain, which I have provisionally exercised by royal order, he has this day taken possession of them, and I advise your Excellency of it for your information, and due effects to the service of his Majesty. May God preserve your Excellency many years.

JOSE DE FUERTES.

His Excellency Subdelegate of the royal domain,

St. Augustine, Florida.

TRANSLATION.

No. 17.

Letter from the Intendant of Havana, dated 26th August, 1816, enclosing copies of agreement with the Captain General, relative to the royal domain in Florida.

HAVANA, *26th August*, 1816.

I enclose to your Excellency, for information, proof, and compliance by that Subdelegation, and officers of the royal domain, where should appear in the corresponding form, a certified copy of the agreement, which, on the ninth instant, I made with the most excellent lord Don José Cienfuegos, Captain General of the island and the two Floridas, suspend-

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ing the preceding commenced in the time of the most excellent lord, his predecessor and mine, on the question to which of the two authorities belongs the superintendency of the royal domain of said two Floridas, and determining that, until his Majesty shall otherwise resolve, both possessions depend on this Intendancy of the Army, to which is annexed the same subdelegated Superintendency General of the royal domain of this island, in all matters and incidents which may offer in this department, as is specified in said agreement; and I charge your Excellency to be pleased to give me, by the first opportunity, competent advice of the receipt and consequent dispositions.

To his Excellency the Governor.

ALEXANDRO RAMIREZ,

Subdelegate of royal domain, St. Augustine, Florida.

TRANSLATION.

Act of accord between the Captain General and the Intendant of Cuba, declaring their joint jurisdiction over the department of royal domain in the Floridas.

HAVANA, *9th August*, 1816.

In the city of Havana, the 9th of August, 1816, the most excellent lord the Governor and Captain General, Don José de Cienfuegos Jovellanos, and his lordship the Intendant, Don Alexandro Ramirez, having seen the proceeding respecting the competition between the Captain General and the Intendant of this island, as to which of the authorities appertains the cognizance of the affairs of the royal domain of the Floridas, and that from the documents collected in said proceedings, it results, 1st, that, by the royal letters patent of the 17th August, 1772, it is ordered "That the province of Louisiana and the city of New Orleans depend on the Captaincy

General of the department *of the royal domain of the Havana, after the same manner as the government of Cuba.*" The 2d, that, by a royal order of the 26th of January, 1782, directed to his excellency Don Bernado de Galves, who was at that time Captain General of the Floridas, it is provided, *that, as Superintendent of the royal domain of said provinces,* he should communicate certain notices to the Intendant of Louisiana. The 3d, that this department has not been uniformly governed; and, since the Intendancy had been established at Pensacola, the Intendant pro tem. considered himself independent of every authority of this island, and that he ought to exercise the functions of Superintendent, respecting which, the regency of the kingdom commanded information to be given to this Intendancy of the Army, by an order of the 19th of January, 1813, in which is expressed, "That it being found inconvenient that Florida depends on this Captaincy General in every respecting security and defence, neither should it be so, that it should be subject to every thing else in the Indendancy of the Army and Superior Council of the domain of this city." The 4th, that, by another order of the same regency of the kingdom of the 27th November, 1812, it was provided that this Captaincy General and Intendancy of the Army should proceed in concert in the affairs of the Floridas, and proposing what they believed convenient for the administration, collection, and distribution of the public domain in said provinces. The 5th, that, finally, this Intendancy was empowered for the commission of what it conferred on Don Antonio Cabanas, suspending the said Intendant pro tem., Don Juan Ventura Morales, from which have resulted various incidences and different royal orders, all directed to the same Intendancy of the Army, that it may cause said affairs to be brought to a conclusion, and give an account of the results. The present chiefs, considering that his Ma-

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jesty not having made an express resolution respecting the exercise of the Superintendency of the royal domain in said provinces, causes confusion in this department, which occasions serious injury to the royal service; that it is of importance that the jurisdiction of these affairs should have a common centre, and which should be the Intendancy of the Army, as well from analogy as because the said commission of inquiry, and its incidents, are rooted in it, and by the virtual tenor of said royal orders; and that it is also of importance to reunite the cognizance of the economical department of said provinces, to inquire into their income and expenditures, and to make proper regulations on those points, granting that they depend on these royal coffers for their principal disbursements, which are the expenses of the garrison. Having minutely examined every thing referred to, and assuming no personal powers but what may be derived from the sovereign pleasure of his Majesty, and what they deem promptly requisite for his better service, to remove doubts and embarrassments, and to give course to the various proceedings detained by this question of jurisdiction, do agree—

First. That the point of doubt, a competition raised in the time of the most Excellent Lord Don Juan Ruiz de Apodaca, respecting the exercise of the superintendency of the royal domain in said provinces, remains reserved for the determination of his Majesty.

Second. That, in the meanwhile, both the ministers of these royal coffers, as well as their Excellencies, the Governor, and military and political commandant of St. Augustine and Pensacola, shall communicate directly with the Intendancy of the Army of this island (it being taken for granted that, for the present, they depend upon it for all kind of aids) in such affairs as may offer relative to the royal domain and

its incidences, without preventing that the said commandants shall also communicate with this Captaincy General in the cases and things of the service appertaining to its powers, and which may require its cognizance.

Third. That to the Intendancy of the Army of this island shall belong the determination and decision of all the affairs of the royal domain, or annexed or incidental thereto, in said provinces, conformably to the ordinance of the Intendants of New Spain, and posterior royal orders; and consequently their Excellencies, the Governor and Commandant of St. Augustine and Pensacola, as Subdelegates, shall observe towards the said Intendency the respective subordination which the said ordinance provides. All which shall be taken notice of and observed until the sovereign determination on the first point of this joint resolution, and that of the Captain General and Intendant of the Army, shall between them treat of those matters which may offer and require their reciprocal and united concurrence, with the harmony and concord which the good of the service exacts, and giving an account to his Majesty, with certified copies of the documents they have had before them, with which this act is concluded, and they signed it.

JOSE CIENFUEGOS,
ALEXANDRO RAMIREZ,
JUAN ANTONIO LOPEZ, *Secretary.*

This is a copy.

JUAN ANTONIO LOPEZ.

The claimants then offered in evidence the following report of the Land Commissioners of East Florida on the claim of Moses E. Levy, which report is contained in the report of the Secretary of the Treasury to Congress, dated 20th May, 1824,

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and is found at pages 74 and 5 of the 11th volume State papers, and is in the words and figures following, to wit:

MOSES E. LEVY
vs.
THE UNITED STATES.

This is a claim for 36,000 acres of land, lying in Alachua. The claimants produced in evidence a certified copy of a concession or grant, made to Fernando de la Maza Arredondo and Son, by the Subdelegate General Superintendent of the Island of Cuba and the two Floridas, Alexander Ramirez, bearing date the 22d day of December, 1817, for four leagues of land to each wind, reckoned from a point, or the settlement of Alachua, to lie in a rectilineal figure, with the conditions imposed that the grantee shall settle upon said lands two hundred Spanish families, and that, also, they should begin the said establishment in three years from the date of the grant, which proceeding occurred with the advice of the Fiscal of the royal domain, and the Surveyor General, under a royal order to the said Superintendent, &c., dated 3d September, 1817, requiring him to use all means in his power to augment the population of Florida. The claimant also produced a deed of conveyance for 36,000 acres of land, executed by F. M. Arredondo, agent and attorney in fact for M. Arredondo and Son, bearing date on the 2d of January, 1822, in exchange for another tract on Alligator creek, for which, it is in proof, claimant paid twenty-five thousand dollars. Claimant also produced in evidence a decree of the Subdelegate General Superintendent of the island of Cuba, &c., dated the 2d December, 1820, allowing one year prolongation. It, however, appears from the testimony of William T. Hall, (see exhibit F) that the settlement did actually begin on the 12th of November, 1820, he, the deponent, being a Spanish

subject, employed to commence said settlement. Although, from much of the testimony taken in this case, it appears that the hostile disposition of the Indians rendered a settlement difficult and precarious sooner than that period, and even then, yet since that time (the testimony is abundant to show) a continuation of the settlement, the establishment of several families there, and a great expenditure of labor and money, by the proprietors. It is in proof (see the depositions of F. P. Sanchez and Frederick Warburg) that Levy, the claimant, has expended in the settlement of families, building houses, clearing lands, furnishing provisions, clothing, &c., upwards of $18,000, and that he has been making arrangements with many families in Europe, for several years past, to bring them to this country, and settle them, for which purpose he purchased this tract of land. It is further in proof, that there are settled upon said grant fifty or more persons, of which about thirty have been introduced by Levy, the claimant; and that, amongst those he has introduced, there are five or six heads of families. Under all these circumstances, although it cannot be pretended that the conditions of the grant to Arredondo have been complied with, we cannot but see a degree of merit in the claim of Mr. Levy, for a part proportionate to his compliance, which entitles it to the peculiar consideration of Government. Whether the Commissioners are bound to regard the merits of the original grant alone, or may decide upon the claims subsequently carved out of it, is a question upon which we have had some difficulty and difference of opinion; but whatever may be the true construction of our powers, we have no difficulty in deciding in favor of the equity of Mr. Levy to have his claim confirmed to a quantity proportionate to the merit and extent of his compliance.

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The said claimants then offered in evidence the following statements, taken from the report of the Land Commissioners of East Florida, which report is contained in the report of the Secretary of the Treasury to Congress, dated 20th May, 1824, and are found at pages 189, 190, and 244, of the 11th vol. State Papers, and are in the words and figures following, to wit:

Alexander M. Muir, *et al.*, by their attorney George Murray, presented their memorial to this Board, praying confirmation of title to thirty thousand seven hundred and twenty acres of land, lying in the district of Alachua, and is an undivided part of a grant of two hundred and eighty-nine thousand six hundred and forty-five English acres and five-sevenths of an acre, made to F. M. Arredondo and José M. Arredondo, with a conveyance from grantees to memorialist, dated 30th October, 1823; which are ordered to be filed.

Nehemiah Brush, jun., by his attorney George Murray, presented his memorial to this Board, praying confirmation of title to 30,000 acres of land, lying in the Alachua district, and is an undivided part of F. M. Arredondo and Son's grant in that district for 289,645 acres of land, with a conveyance from grantees to memorialist, dated 4th September, 1821, and certificates attached thereto; which are ordered to be filed.

Fernando de la Maza Arredondo and Son, by their attorney Isaac N. Cox, Esq., presented their claim to 289,640 acres of land, situated and known by the name of the Alachua country, with a certified copy of concession by Alexander Ramirez, Intendant General of the island of Cuba, dated 22d December, 1817; filed.

The said claimants also offered in evidence the following statements, taken from the aforesaid report, and found in the

aforesaid volume of State Papers, at pages 258 and 259, and are in the words and figures following, to wit:

DECEMBER 19.

The board took into consideration the claim of Moses E. Levy for thirty-six thousand acres of land; and the documents marked with red ink, A, B, C, D, E, F, G, H, and I, being read, as well, also, as the deposition of E. M. Wanton, the Board then proceeded to examine therein Thomas Murphy. At 2 o'clock P. M., not being sufficiently advised of and concerning the said claim, adjourned the further consideration thereof until to-morrow.

DECEMBER 20.

Ordered, That the testimony of Hipolite Chateaneuf, as taken in the claim of Moses E. Levy *vs.* the United States, for thirty-six thousand acres of land, be read in evidence in all the cases under the Alachua grant.

The Board resumed the consideration of the claim of Moses E. Levy, and re-examined therein Thomas Murphy, and examined Hipolite Chateaneuf. At 4 o'clock P. M., not being sufficiently advised of and concerning the said claim, adjourned the further consideration thereof until Monday next.

DECEMBER 22.

The Board resumed the consideration of the claim of Moses E. Levy. A certified copy of the royal order of September, 1817, from the Secretary's office of the Intendant of Havana, was affixed as evidence by Moses E. Levy; and satisfactory proof being made by the testimony of Antonio Alvarez, John Cavedo, and E. M. Gomez, sworn and examined, that Juan Nepomuceno de Arrocha, who certifies the same, is Secretary of said office; that he has no seal of office; as well, also, as proof identifying his signature; it is resolved, upon due deliberation by the Board,

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unanimously, That the said copy of the royal order of the 3d of September, 1817, and the certificate of the said Arrocha, Secretary as aforesaid, be received and allowed as evidence in the claim of said Levy; and that the same, together with the certificate of John Mountain, vice Commercial Agent of the United States at Havana, thereto appended, be filed.

DECEMBER 23.

Before adjournment, the Board resolved, That the depositions of all witnesses in the case of Moses E. Levy be admitted in all cases under the Alachua grant represented before this Board, upon condition, however, that the whole of each deposition should be taken, or the whole rejected.

DECEMBER 24.

The Board resumed the consideration of Moses E. Levy's claim for thirty-six thousand acres, and examined therein George J. F. Clarke, Gabriel W. Perpall, and Francis P. Sanchez. At 2 o'clock P. M., not being sufficiently advised of and concerning said claim, adjourned the further consideration thereof until Friday, the 26th instant, at 10 o'clock A. M.

DECEMBER 26.

The Board resumed the consideration of the claim of Moses E. Levy, and examined therein Anthony Rutant and William Simmons. It was then submitted for final decision, with leave to introduce the evidence of Frederick Warburg, if thought fit.

The said claimants then offered the following documents, marked B, C, D, and E, taken from the said report, and are found in the aforesaid volume of State Papers, at pages 316 to 320, and are in the words and figures following, to wit:

B.

TRANSLATION.

[The original appears to have been written on stamped paper of the second class, valid for the years 1816 and 1817.]

Don Alexandro Ramirez, Intendant of the Army, Superintendent General Subdelegate of the Royal Treasury of the island of Cuba and the two Floridas, President of the Tribunal of Accounts and of the Committee of Tythes, Superintendent of the Crusada, Sole Judge of Arrividas, Protector of the Royal Lottery, Chief Director and Inspector of the Royal Monopoly of Tobacco, &c.

Whereas Don Fernando de la Maza Arredondo and Son, of this city, merchants, have presented a petition to this Intendancy and General Subdelegate Superintendency, dated 12th November last, praying a gratuitous grant of a piece of ground in East Florida where they have been established, and where the greatest part of their families reside, with much of their property, offering to form an establishment in the territory known by the name of *Alachua*, the same being suitable for the raising of cattle and grain, if cultivated by 200 families, which they will at their expense transport there; showing, also, the advantages that will result in favor not only of the other inhabitants already established and being in the city of St. Augustine, but likewise of the Creek and Seminole Indians on the boundaries of that country, provided that the said tract of land be granted unto them, with an absolute dominion thereon, it being considered of four leagues of ground to each point of the compass, reckoned from the aforesaid establishment of Alachua, which is to be fixed as the central point; which petition having, by my decree of the 12th instant, been referred to the Captain of Infantry Don Vincente Sebastian Pintado, Surveyor General of the Floridas, he returned it on

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the 15th, with the requisite explanation, advancing the most solid reasons to show and demonstrate how convenient and useful it would be to encourage the settling of that province without any expense to the royal treasury, and to accept the proposals of the concerned, on account of the importance of the undertaking, and of the great expenses they must make in order to put it into execution. In consequence thereof, and by a decree of the same day, the aforesaid petition and report were passed to the inspection of the King's Attorney, in the Treasury Department, who, in his memorial of the 17th, supported the petition of De la Maza Arredondo and Son, founding his opinion on the royal orders for the encouragement of settling in these possessions of his Majesty, and consented that the said grant of the tract of land shall be made unto him, on the terms they propose; in consequence whereof, I issued yesterday the decree as follows:

"These proceedings having been examined in consequence "and by virtue of the royal order of the 3d of September "of this year, by which his Majesty appointed me to the "Superintendency of the two Floridas, has most expressly "ordered that I should endeavor to encourage the settling of "those provinces by every means that my prudence and "zeal can suggest, in conformity with the opinion of the "King's Attorney, and the report of the Surveyor General of "said provinces, the tract of land called *Alachua*, in the East "Florida, is declared unappropriated and belonging to the "King. In consequence thereof, and taking into considera-"tion the notorious honesty and fidelity, as well as the known "wealth and other good qualities of Don Fernando de la "Maza Arredondo and Son, I grant unto them that piece of "ground which they ask, out of the said unappropriated "tract of land, in full property, in conformity with the royal

"orders on the subject, and under the precise condition to "which they are bound there to settle two hundred families, "and they shall be Spanish, together with all other requisites "already set forth, and that will be set forth, by this Superin- "tendency, by virtue of the said royal order; and, also, that "they must begin the establishment in the term of three "years at furthest, without which this grant shall be void, and "that the same must be understood provided that it will not "be prejudicial to the right of any third person, and more "especially to the native Indians of that country, that may "have returned or may intend to return to it, to cultivate the "fields."

Let these proceedings pass to the said Surveyor General, to make the plan of this grant, in conformity to his report, and to the extent of four leagues to each point of the compass, as herein granted, in rectilineal figure, with all possible clearness, in order to prevent doubts and law-suits in future. All which being done, let a title in due form be granted, with the said plan annexed to it, of which a copy must be kept with the proceedings, it being understood that the three years as aforesaid for the commencement of the establishment of the families, must be reckoned from this day; and that, on the first families being ready to be sent, the concerned will lodge information thereof, with a list of the individuals, their birthright and employment, that the necessary orders and instructions be given to the Government and Subdelegation of the Royal Treasury in East Florida, in order that his Majesty may be opportunely informed thereof.

The figurative plan as aforesaid being presented by the Surveyor, together with the explanation of the survey and the admensurations, it appears that the above mentioned tract of land is situated in the East Florida, fifty-two miles, more or

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less, west of the city of St. Augustine, and about thirty-six miles west of the eastern shore of the river St. Juan, bounded on all sides by unappropriated land, and having in or about its centre the place known by the name of *Alachua*, which was formerly inhabited by a tribe of Seminole Indians that abandoned it; and, according to the dimension and form set forth in the said plan, and the explanation thereto annexed, and taking it into consideration that the leagues used in that province consist of three English miles, and each of them one thousand seven hundred and sixty yards, or eighty Gunter's chains, the tract of land granted as aforesaid contains two hundred and eighty-nine thousand six hundred and forty-five English acres and five-sevenths of another, which are equal to three hundred and forty-two thousand two hundred and fifty arpents and one-seventh of another, of those in use in West Florida, the English acre being reckoned at one hundred and sixty poles or perches, and each lineal English perch at sixteen and a half London feet, according to the use in the time of the British possessions of that country, which has ever since been tolerated in our Government.

Wherefore, and using the faculties which our lord the King (whom God preserve) has conferred upon me, in his royal name I gratuitously grant unto the above mentioned Don Fernando de la Maza Arredondo y Hijo, the number of acres of land above stated in the direction, boundaries, and distances, set forth in the figurative plan, of which a copy must be annexed to this title, that they may possess and enjoy them as sole masters thereof, and in the terms mentioned in my decree herein inserted. In testimony whereof, I have ordered this title to be given, signed by me, sealed with the royal seal of my Secretary's department, and countersigned by the Commissary at War, Don Pedro Carrambot, appoint-

ed by his Majesty Secretary of this Intendancy, and Subdelegate Superintendency.

Given at Havana, on the twenty-second day of December, one thousand eight hundred and seventeen.

PETER CARRAMBOT.

ALEXANDER RAMIREZ.

The foregoing title was registered in the book for that purpose in the office under my charge. Havana: dated as above.

A copy. CARROMBOT.

JUAN NEPOM. DE ARROCHA.

C.

TRANSLATION.

Don Juan Nepomuceno De Arrocha, Secretary of the *Intendencia de Exercito*, (Intendancy of the Army,) General Superintendency Subdelegate of the national domain of this Island, and the two Floridas. I certify that his honor the Indendant of the Army, Superintendant General, Subdelegate of the same national domain, has this day decreed as follows: "Having before me the information received at this office from the Senior Gobernador and Subdelegate of San Augustin, of Florida, and in consequence of the instructions given him by this General Superintendency on the 2d October ultimo, and attending to the reasons which the concerned adduced, Don Fernando de la Maza Arredondo and Son, they are allowed *prolongation* of one year, which they have solicited, for the object proposed; without any prejudice to their interest, let it be given to them, certificates of the Secretary's office for the end and purposes which may suit their interest. Let this be communicated to the same Senior Subdelegate for his intelligence; and, in conformity of this decree, I give the present, at Havana, the 2d day of December, 1820.

JUAN NEPOMUCENO DE ARROCHA.

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D.

HAVANA, 2d *April*, 1820.

The annexed memorial, which Don Fernando de la Maza Arredondo and Son, of this commerce, presented me, with the title of a concession of a lot of land, which was granted to them by this Subdelegate General Superintendency, in December, 1817, asks for prolongation of one year, to accomplish or carry into effect the establishment of the families which he proposed; and it is convenient that your Lordship inform me on this particular point. I have, in consequence, so decreed it, on this day, accompanying it with a certified copy of the title, not to expose the original to the danger of the seas.

God preserve you many years.

ALEXANDRO RAMIREZ.

Don JOSE COPPINGER.

E.

In your Lordship's official letter of this current month, you ask me to inform you on the subject of one year's prolongation, solicited by Don Fernando de la Maza Arredondo and Son, of that commerce, for the establishment of the families which he proposed, in the territory of Alachua, which gratuitous concession, with formal title, he obtained of that Subdelegate General Superintendency, in December of 1817. I must inform your Lordship, that, as yet, only the copy of the said grant has come to hand, but not the memorial of Arredondo, which your Lordship speaks of in your said official letter. I have to inform your Lordship that I find no obstacle, or have no objection that the said prolongation shall be granted, because, if this meditated establishment takes place, the benefits that will result from it will be considerable, and

will further the prosperity of this province, which our Government so anxiously desires to promote. God preserve your Lordship many years.

St. Augustine, *October 23d*, 1820.

To the Intendant of the Army,

Superintendant General of the two Floridas.

The said claimants then offered in evidence the following letter from the Secretary of the Treasury to the Speaker of the House of Representatives, together with the following report of the Commissioners for East Florida, transmitted to Congress with the said letter, to wit:

Treasury Department,

February 21, 1826.

Sir: In obedience to a resolution of the House of Representatives of the 7th instant, directing the Secretary of the Treasury to communicate to the House copies of the late registers or abstracts of the claims to land in East Florida, lately deposited in this Department by the Commissioners of that district, under the quantity of three thousand five hundred acres, with the general report of said Commissioners, containing their reasons for the admission or rejection of the said claims, and full copies, with the evidence and decision of all claims over that quantity, which have been made and lately deposited in the Treasury Department, I have the honor to transmit, herewith, copies of the following documents, to wit:

1. The abstracts of the decisions of the Commissioners, numbered from 1 to 10, inclusive.

2. The evidence transmitted in cases exceeding 3,500 acres, referring to abstract No. 3, and numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 19, 20, 21, 22, 23, 25, 26.

3. The evidence, numbered 11, in the case of Francis P. Fatio *et al.*, lately deposited in the Department, but referring to abstract No. 5, printed among the documents of Congress, with the report from this Department, dated 21st February, 1825.

4. The reports of the Commissioners, dated 1st January, 1826, and 31st of the same month.

I have the honor to be, with great respect,

Your most obedient servant,

RICHARD RUSH.

To the Hon. the SPEAKER

of the House of Representatives.

REPORT NO 3.

Register of Claims to land exceeding 3,500 acres, in East Florida, which are founded on Patents, or Royal Titles, derived from the Spanish Government, and which, in the opinion of the Commissioners, are valid.

Numbers.	NAMES OF		Date of the patent, or royal title.	Date of the concession or order of survey.	Quantity of land.	By whom conceded.	Authority or royal order under which the concession was granted	Conditions.	Date of survey.	By whom surveyed.	Where situated.	OCCUPATION AND CULTIVATION.		GENERAL REMARKS.
	Present claimant.	Original claimant.										From	To	
	Here are included a number of claimants in the report numbered from 1 to 12, inclusive.				acres hdths									
13	F. M. Arredonde & Son.	F. M. Arredondo & Son.	22d Dec. 1817.	-	4 leagues to each wind.	Intendant of Cuba & Florida.	1817	Complied with.	-	-	Alachua.	Nov'r 1820.	28th Dec 1824.	
14	Peter Mitchel. -	Same. - -	do	-	½ of above	do	do	do	-	-	do	do	do	
15	Alexander M. Muir.	Same. - -	do	-	30,720	do	do	do	-	-	do	do	do	
16	N. Brush. -	Same. - -	do	-	10,000	do	do	do	-	-	do	do	do	
17	ElishaHuntington.	Same. - -	do	-	10,000	do	do	do	-	-	do	do	do	
18	The same. -	Same. - -	do	-	2,000	do	do	do	-	-	do	do	do	
	Here follow several other claims.													

All which is respectfully submitted.

DAVIS FLOYD,
W. H. ALLEN.

ST. AUGUSTINE, 31*st December*, 1825.

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The said claimants then introduced in evidence the following documents of naturalization of William T. Hall and Edward M. Wanton, translated by the translator of this court from copies of the originals, certified by the keeper of the public archives of East Florida.

TRANSLATION.

In the city of St. Augustine of Florida, on the twenty-first of November, one thousand eight hundred and one, appeared before his Lordship, Don Edwardo Wanton, a native of the city of St. Augustine, a bachelor and cultivator, and professing the Catholic Roman religion, under which, and according to law, the oath was administered to him before me, the notary, and in presence of Don Juan de Pieira, Secretary of the Government; under which oath he promised fidelity and allegiance to our sovereign, to take arms in the defence of the province against any enemy whatever, who may intend hostilities against it; to subject himself entirely to the laws of the kingdom. After the taking of said oath, another was administered to him concerning his property, which, he said, consisted in eleven negroes, his slaves, two horses, and seventeen head of neat cattle; and he signed it with his Lordship and the said Secretary, which I attest.

EDWARD WANTON,

WHITE. JUAN DE PIEIRA.

Before me, JOSE DE ZUBIZARRETA,

Secretary of the Government.

TRANSLATION.

In the city of St. Augustine of Florida, on the eleventh of June, one thousand eight hundred and seventeen, before his Lordship Don Jose Coppinger, Colonel of the Royal Armies, Civil and Military Governor, pro tem., of this place and of

the province thereof, appeared Don Guillermo Hall, a native of Bermuda, bachelor and merchant, twenty-nine years old, professing the Protestant religion, under which, through the medium of Don Gabriel Perpall, who acted as the interpreter, the oath was administered to him, under which he promised fidelity and allegiance to our King and sovereign lord, Don Fernando the Seventh; to take arms in the defence of this province, against any enemy whatever, who may intend to invade it; and to subject himself entirely to the laws of the kingdom: thus ended the act, which he signed with his Lordship and the interpreter, which I attest.

WILLIAM HALL.

JOSE COPPINGER. GABRIEL PERPALL.

Before me, JUAN DE ENTRALGO,

Secretary of the Government.

The said petitioners offered in evidence, and proved the execution of the following mesne conveyances, to wit: Conveyance from Fernando M. Arredondo and Son to Alexander Muir, William Thorn, and Noah Jarvis; from F. M. Arredondo and Son to Elisha Huntington; from F. M. Arredondo and Son to N. Brush, jr.; from Nathaniel Wells to Isaac Marquard; from the same to the same; from Thomas Gibbons to Abraham A. Prall; from Elihu Woodruff to Ichabod Prall; and from Jeromus Johnson and Ichabod Prall to Abraham A. Prall; and also offered in evidence, and proved the due execution of a contract between F. M. Arredondo and Francis R. Sanchez, for the settling of the Alachua district. The counsel for the United States then admitted the due execution of the following mesne conveyances, to wit: Conveyance from F. M. Arredondo to Nathaniel Wells, and from the heirs of Nathaniel Wells to Jeromus Johnson; all of which are duly filed herein.

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And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Tuesday, the fourteenth day of said term, and the seventeenth of said month, the following entry was made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; whereupon the following agreement was filed, to wit: The deeds of conveyance from the grantees to the other petitioners in the above suit, filed and proved herein, with their authentications; being voluminous and expensive, it is agreed by the Law Agent and District Attorney of the United States, and the counsel of the claimants, that they remain on file in the Clerk's office of this Court, and that they shall not be copied into the record to be sent to the Supreme Court, if an appeal shall be taken by either party; and instead of the deeds, in extenso, the quantities claimed by each shall be substituted in an abstract of the conveyances filed herein. Joseph M. Hermandez sworn as a witness on behalf of the claimants, and his testimony taken.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Thursday, the sixteenth day of said term, and the nineteenth of said month, the following entry was made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; whereupon George J. F. Clarke, a witness heretofore sworn herein on

behalf of the claimants, was on this day again examined, and his testimony taken.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Friday, the seventeenth day of said term, and the twentieth of said month, the following entry was made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; whereupon George J. F. Clarke was again called and examined, and his testimony taken; and Euxbio M. Gomez and John Masters were sworn as witnesses on behalf of the claimants, examined, and their testimony taken.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Monday, the eighteenth day of said term, and the twenty-third of said month, the following entries were made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; whereupon the said defendant, by its counsel, offered in evidence the following explanation by the King of the edict published by the Cortes, January 4th, 1803, found at page 1010 of Clarke's Compilation of the Land Laws, and at page 235 of White's Compilation, contained in a letter addressed to the Governor of Florida, and is in the words and figures following, to wit:

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TRANSLATION.

Letter to the Governor of Florida, containing the royal order that the laws of the Indies respecting lands should be observed.

The King, desirous to prevent the doubts which have begun to be raised by reason of the decree of the 4th of January of last year, relative to the distribution of lands, and that all disputes may disappear, which have arisen from the forgetfulness and want of observance of the provisions of the laws of the Indies, and the ordinances of the Intendants, with serious injury to the royal treasury, and the proprietors, who, agreeably to the same, have legally acquired them, *has been* pleased to command that the Intendant comply exactly with what is directed in said ordinances, respecting the alienation of lands, the proceeds of which, as well as of every thing else of the royal domain, should be applied to the support of the expenses of the same; and that, in their tribunals, they attend to what is prescribed in the laws of the Indies, and particularly in the royal instructions of the 15th October, 1754, not admitting the least recourse of a corporation or town against those lands, which, being already laid off and measured, should be adjudged to their owners, in virtue of a title of gift, composition, or purchase; as it is his Majesty's desire that interpretations to the contrary of this command should in no manner prejudice his royal interest, nor those of his loyal subjects, in these dominions; which I communicate to your Excellency by royal order, for your information, and that you may command its punctual execution. God preserve your Excellency many years.

GONGORA.

MADRID, *June* 8, 1814.

To his Excellency the Governor of St. Augustine, Florida.

The said defendant, by its counsel, also offered in evidence the following document, taken from White's Compilation, at pages 276 and 277; which said document is in the words and figures following, to wit:

Extract of a treaty between Great Britain and the Upper and Lower Creek Indians, signed at Picolata, in the Province of East Florida, the 18th November, 1765.

ARTICLE 5. To prevent all disputes on account of encroachments, or supposed encroachments, made by the English inhabitants of his Majesty's said province, on the lands or hunting grounds reserved and claimed by the Upper and Lower nation of Creek Indians, and that no doubts, mistakes, or disputes may, for the future, arise; in consideration of the great marks of friendship, benevolence, and clemency, generosity and protection extended to us the said Indians of the Upper and Lower Creek nations, by his Majesty King George the Third, we, the chiefs, head warriors, and leaders of our respective nations, by virtue and in pursuance of the full rights and power which we now have and are possessed of, have agreed, and we do hereby agree, that, for the future, the boundary line of his Majesty's said province of East Florida shall be all the seacoast, as far as the tide flows, in the manner settled with the English by the Great Tomachichez, with all the country to the eastward of St. John's river, forming nearly an island, from its source to its entrance into the sea; and to the westward of St. John's river, by a line drawn from its source to its entrance into the sea; and to the westward of St. John's river, by a line drawn from the entrance of the creek Ocklawagh into said river, above the great lake, and near to Spaulding's upper trading store-house, to the forks of Black creek at Colville's plantation, and from thence to that

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part of St. Mary's river, which shall be intersected by the continuation of the line, to the entrance of Turkey creek, in the river Altamaha. That no notice is to be taken of such horses or cattle as shall pass the line. And we do hereby accordingly grant and confirm unto his Majesty, his heirs and successors, all the said lands within the said lines.

JAMES GRANT, *Governor.*
JOHN STEWART, *Agent and Superintendent of Indian Affairs.*

And by thirty-one Indian chiefs.

I certify that the preceding is a faithful extract from the original treaty, deposited in the State Paper office.

LEWIS HERTSLET, *Librarian.*

Signed in the presence of

JOHN PLANTER, Jr., *Under Sec'y of State, Foreign Office, August 5,* 1828.

I, Cary Nicholas, Clerk of the Superior Court for the middle district of Florida, do certify the foregoing to be true copies from the documents filed in my office.

C. NICHOLAS, *Clerk.*
By JAMES S. LINN, *D. C.*

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to-wit, on Tuesday, the nineteenth day of said term, and the twenty-fourth of said month, the following entry was made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their counsel; whereupon Jacob Summerall and Samuel Worthington were duly sworn as witnesses on behalf of the defendant, and their testimony taken.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Wednesday, the twentieth day of said term, and the twenty-fifth of said month, the following entry was made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their counsel; whereupon Britton Knight and William H. Ward were duly sworn as witnesses on behalf of the defendant, and their testimony taken.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Thursday, the twenty-first day of said term, and the twenty-sixth of said month, the following entry of record was made, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their counsel; whereupon the said defendant, by its counsel, offered in evidence a letter from Don Enrique White, Governor of East Florida, to the Marquis of Someruelos, to the received of which in evidence, the said claimants objected; which objection was overruled by the court, and the same ordered to be filed.

The said defendant, by its counsel, also offered in evidence the following documents, found in White's Compilation, at pages 217 and 18, and, also, in Clarke's Compilation of the Land Laws, at page 989, to the received of which in evidence, the said claimants, by their counsel, objected; which objection was overruled by the court, and the same ordered to be received; which said documents are in the words and figures following, to wit:

512.

Refusal of the Intendant to sell lands, &c.

I have to reply to your communication, No. 9, that I cannot at this time consent to the sales of lands, in the manner and under the circumstances requested; and I have to make the same reply to that of the 6th February last, No. 8, in which you ask for 100,000 arpents. God preserve you, &c.

NEW ORLEANS, 3*d April*, 1800.

RAMON DE LOPEZ Y ANGULA.

To Don HENRY PEYROUX,

Commandant at New Madrid.

A further refusal, because the proposals appear speculations hurtful to poor people, &c.

It was never the intention of the King to dispose of lands in such large quantities and under such circumstances as are stated in your letter of the 9th of February last, No. 9, and the petition of the inhabitants accompanying it.

It is true, that, in the new regulation, there are provisions made for the sale of lands in the manner referred to; but it is only under the previous formalities there specified, and with a reference to the ability and forces of the persons desirous of purchasing, because it would not be just, that, for a small consideration, one or more speculators should make themselves masters of a great extent of lands, to the prejudice of others coming to settle, and who, consequently, find themselves driven to purchase those lands which they might otherwise have obtained free of expense.

For these reasons, I cannot at present accede to the beforementioned proposal, which you will make known to the parties concerned. God preserve you, &c.

NEW ORLEANS, 3*d April*, 1800.

RAMON DE LOPEZ Y ANGULA.

To Don HENRY PEYROUX.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Saturday, the twenty-second day of said term, and the twenty-eighth of said month, the following entry was made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their counsel; whereupon the defendant, by its counsel, offered in evidence the following treaty, taken from the 10th volume of American State Papers, at pages 223 to 227, which was received in evidence without objection by the counsel for the claimants, and is in the words and figures following, to wit:

Articles of convention, treaty, and pacification, stipulated and agreed on by the Spanish nation with the Talapuche Indians, at the congress held for this purpose at the fort of Pensacola, the capital of West Florida, on the 31*st day of May and* 1*st of June,* 1784.

In the name of God Almighty. Be it known to all to whom these presents come or may come, that we, Don Stephen Miro, Colonel of the Regiment of Infantry established in Louisiana, and Commandant charged with the civil and military government of that province, by order of his Excellency the Count de Galvez, Lieutenant General of the Royal Armies, Governor and Captain General of the provinces of Louisiana and West Florida, Colonel Don Arthur O'Neill, Governor, civil and military, of this town of Pensacola, Don Martin Navarro, Intendant General of said provinces, and Alexander McGillvray, principal representative of the towns of the Upper Talapuches, Middle Talapuches, and Lower Talapuches, called Seminoles or Wanderers, the Savanas or Ioannis, and part of the Natchez and Chickasaws; stipulating in the name of all, in

513.

general, and particularly for Abnegle, principal chief of the four towns of Talasie, Ysacho, or the Mad Dog, chief of the town of Tocopaache, Mecko pohega, of that of Hudeo Ocayé, Taskeohuina, of that of Schitabe, Opayaacho, of that of Pakana, Tahalache, Taskikina, of that of Crevale, Oeragula, of that of Atache, Opaye Mecko, of that of Ochiapo, Nenni Ganguichi, of that of Edomé Mecke Deteski, of that of Mongulaska Paychache, of that of Oyocaské, Opeztle, of that of Yosata, Ayufalaacho, of that of Taskika Acca, Macho, principal chief of Abecuchi and three towns of Abecas, Opayé, of that of Statclocalgo, Niachumaetaopaye, of that of Uhihuoca, or the waters which follow; with the towns of Alibamas, Conchatis and Tomachas, and the towns of Osashe, Taskeys, Tehonacalé, or the middle road, Cananatke, or Tetuchina, Touchatchie, Otasie, Sougaatché, all Upper Talapuchy towns; which chiefs, with many others, remain in the nation, having given consent to whatever the abovesaid Alexander McGillvray shall do and treat; who treats, also, in the name of Yahula Mecko, principal chief of the three towns of Cahuitas, in the middle Talapuches, of Pisto Mecko, principal chief of the towns of the Uchises, Chahuape, of that of Stlecaasa, Cycotle Mecko, of that of Echité Cachita Mecko, of that of Cachita Sincheis Mecko, of that of Apalechocola; from Uoloche and the towns of Chapeache, Ocone, Lower Talapuches, or Seminoles, of Usatastanequé or War dog, chief of the town of Natchez, of Chickasaw Mingo; of that of the Chickasaw Retired Arrow, the Talapuchy; in the name, also, of the various other towns, chiefs, captains, and warriors, not present, their wives and children, and all the nation in general, desiring, unanimously, to obliterate the remembrance of the evils caused by the last war, and to make all the subjects to enjoy the fruits of peace, to conclude and cement, on the most solid foundations, the friend-

ship and good union which the Spanish nation proffers to the Talapuchy tribes, have agreed on the following articles.

ARTICLE 1. We, the said chiefs, for the Talapuchy nation, for ourselves, and in the name of the other chiefs, captains, warriors, and other individuals, of whatever quality, sex, or condition, they be, promise and engage ourselves before the Supreme God, Creator of the heaven and earth, to whom are subject all things visible, to keep and maintain an inviolable peace and fidelity with his Catholic Majesty, his provinces, subjects, and vassals, procuring to ourselves reciprocally whatever advantages may contribute to the interest and glory of both the contracting parties. We undertake to expose for the royal service of his Catholic Majesty our lives and fortunes; and we promise to obey the sovereign orders, which, in a case of necessity, shall be communicated to us by the Captain General of the provinces of Louisiana and Florida, and in his name by the respective Governors or particular commanders of said provinces, conducting ourselves always with the greatest harmony, union, and friendship; moreover, from this instant, of our proper and spontaneous will, we promise to obey the laws of the great King of the Spains, in those points which are compatible with our character and circumstances, conforming ourselves to the usages and municipal customs which are established, and hereafter shall be established, in the provinces of Louisiana and both Floridas, regulating, in every thing of common accord and in good faith, the difficult points which may need explanation.

ARTICLE 2. To correspond, on the part of his Catholic Majesty, to the confidence which merits the worthy and honorable chiefs of the Talapuchy nation, and the others who are in the lands conquered by the arms of his Majesty, we, the above named Don Stephen Miro, Deputy Governor of the province of Louisiana, Don Arthur O'Neill, Commandant of the for-

3 14.

tress of Pensacola, and Don Martin Navarro, Intendant General of both provinces, promise, in the name of the King, to proportion among the contracting nations a commerce permanent and unalterable, unless the inevitable event of war impedes the exact fulfilment of this promise, at the most equitable prices; to which effect, there shall be formed by agreement of both parties, conjointly, in this present congress, corresponding tariffs or regulations, by which the mutual traffic shall be fixed, and which shall be inviolably observed by the individuals of the contracting parties with the most religious scrupulousness.

Article 3 To encourage more and more commerce and agriculture, the Talapuchy nation shall establish a general peace with the nations of Chickasaws, Choctaws, and others of the continent, ceasing all kind of hostility, forgetting all the past, and living in the greatest harmony. The disturber of these good dispositions and desires shall be considered as an enemy of the public tranquillity of mankind, and of the contracting parties.

Article 4. We, the already mentioned chiefs of the Talapuchy nations, as often as any stranger shall introduce himself into our towns with the insidious idea of inducing us to take up arms against sovereign the great King of the Spains, his vassals and allies, oblige ourselves to arrest him immediately, submitting him to the disposal of the Governor of Pensacola, without that, that his having been taken within our possessions shall serve him as an immunity from punishment.

Article 5. We will not admit into our towns any white person, of what nation soever he be, without any distinction, (whether it be under the pretext of commerce or other pretence,) who shall not bear the correspondent passport of these provinces, or in particular of this fort.

ARTICLE 6. In pursuance of the humanity, and corresponding to the generous sentiments of the Spanish nation, we renounce for ever the practice of taking scalps, or making slaves of the whites; and in case that an unexpected war against the enemies of his Catholic Majesty should put us in the case of making any prisoners, we will treat them with that hospitality which corresponds, in imitation of the civilized nations, exchanging afterwards with an equal number of Indians, or receiving, in place thereof, the quantity of merchandise which shall be previously stipulated, without committing on any of the said prisoners of war the least attempt of their life.

ARTICLE 7. We will deliver, in good faith, to the order of the Governor General of these provinces, all the white prisoners subjects of the United States of America, if it be found that there is any one detained, and we will not exact for them any reward.

ARTICLE 8. We will not admit deserters, nor negroes, nor mulatto slaves, fugitives (amarones) of the provinces of Louisiana and Florida, into our establishment; and those who shall present themselves within them shall be immediately (apprehended) with us at the orders of the Governors, satisfaction being made us for the apprehension by the corps, if the person apprehended be a soldier, or by the masters to whom he belongs, if he be a slave.

ARTICLE 9. We will prevent our people, by all means possible, from committing any theft of horses or cattle of whatsoever kind they be; and those which shall be met with, stolen, in whatever place it be, shall be returned in good faith, whenever they shall be reclaimed by the parties interested, who shall be under the necessary obligation of proving before the Governor or chiefs of the towns in which they shall be, the property of the price demanded.

375.

ARTICLE 10. We will afford to the Spanish traders who may go, with the respective licenses of the Governor, to trade in our towns, all the protection and assistance which they may want, observing our contracts according to good faith, and the rules of the tariff, of which they shall deliver us the necessary copies.

ARTICLE 11. As the traders ought to establish themselves within the towns, we will not permit them to do it secretly, fixing their magazines in the woods and other private places, to the end to avoid by those means the disorder which a little abuse and mal-practice would occasion. If any one shall contravene this article, we will give notice thereof to the chief of the place, that he may take the measures which he may esteem necessary.

ARTICLE 12. To maintain the orders exacted by reason, equity, and justice—the principal basis of this congress—and on which depend our lives and properties, as well as the tranquillity of our towns, whenever any individual of our nation shall commit the horrible and detestable crime of murder on the person of any subject of his Catholic Majesty, we oblige ourselves to deliver the head of the aggressor. In mutual consideration of which, we, the said Deputy Governor and the respective Commandants of these provinces, oblige ourselves, that, when the same case shall happen by the subjects of his Catholic Majesty, we will punish the delinquent conformably to the laws of our kingdoms, in presence of the chief of the sufferers.

ARTICLE 13. As the generous mind of his Catholic Majesty does not exact from the nation of Indians any lands to form establishments to the prejudice of the right of those who enjoy them, in consequence and with the knowledge of his paternal love towards his beloved nations, we promise, in his

royal name, the security and guaranty of those which they actually hold, according to the right of property with which they possess them, on condition that they are comprehended within the lines and limits of his Catholic Majesty, our sovereign. And, to make more evident the extent of his royal clemency, whenever, by any war or other accident, the Talapuches may be dispossessed of their lands by the enemies of the crown, there shall be granted to them others equivalent, which may be vacant, for their establishment, without other concern or retribution than that of their constant fidelity. And for the proof, accomplishment, and entire observance of this, while the royal approbation of his Majesty shall be solicited, to whom I, the said Deputy Governor of Louisiana, will send it, we, the said Governor and Intendant, with the said Alexander McGillvray, informed of the whole by means of a literal and exact translation, which for this purpose was reduced by Don Juan Joseph Duforett, Captain of the Militia of Louisiana, and Interpreter of the English idiom for his Majesty in the said province, have signed these presents, and sealed the same with the seal of our arms, and countersigned by the underwritten Secretary of the Government, and Captain General of the provinces of Louisiana and West Florida, in the fort of Pensacola, the first of the month of June, in the year 1784.

STEPHEN MIRO.
ARTHUR O'NEILL.
MARTIN NAVARRO.
ALEXANDER McGILLVRAY.

By order of his superiors:

ANDREW LOPEZ DE ARMESTO.

A copy.

IANDENES.
VIAR.

570.

Department of State, to wit:

[L. S.] I hereby certify that the foregoing is a true translation of the copy of a treaty, in the Spanish language, between the Spanish nation on the one part, and the Talapuche Indians on the other, concluded in the fort of Pensacola on the 31st of May and 1st of June, 1784, as communicated to the Secretary of State by Messrs. Viar and Iandenes, Commissioners on the part of Spain to the United States. Given under my hand and seal of office, this 16th day of May, 1793.

TH. JEFFERSON.

The said defendant, by its counsel, then offered in evidence the following extracts taken from White's Compilation, at pages 115, 16, and 17, to the received of which in evidence the said claimants objected, because they are immaterial and irrelevant, not because they are extracts; which objection was overruled, and the same ordered to be received: which said extracts are in the words and figures following, to wit:

Extracts from the condition and by-laws for settlements, which shall be observed by the inhabitants of the new village of Enemas del Principe.

3. There shall be given to each of the twenty-four laborers a tract of land, containing *fanegas*, each fanaga to consist of six thousand and four hundred square yards, (varas,) the usual measure of Estremadura: said tract shall be enclosed and laid off for each housekeeper, not only during the season of sowing and reaping, but also in those of ploughing and stubble, with absolute right over it. Such as shall enter the same on pretence of driving his cattle thereon, as being stubble or commons, or for any other cause, shall be severely punished, and the most prompt and efficient justice shall be administered

in such cases; each tract being laid and marked out, and dividing ditches dug out, until fences, live hedges, or trees can be erected and planted, to mark such divisions, to which particular attention shall be paid.

8. The settler shall have power to keep as many as two hundred head of sheep, for which he may rent his lands.

9. He shall besides be allowed, at the extremity of his lot, and contiguous thereto, fifty fanegas of land, as pasture for said two hundred head of sheep, at the rate of one hundred estadales, each of sixteen square yards (varas) for each head.

10. In order, by this means, the pastures for the sheep may surround the tracts, the twenty-four settlers may, either altogether or by twelve or six, or in any other manner, unite in such a way as to secure to the two hundred sheep belonging to each of them the benefit of the aggregate of all the pasture land appertaining to the corresponding number of farms; it being well understood that whoever may wish to enclose his pasture ground in order to cultivate it, shall be at liberty so to do, taking, in such cases, that only which belongs to his tract.

11. No other cattle of the settlement shall, in any manner, have right to enter the pasture ground so laid out, in order that the portion assigned to each settler may not be diminished, and that no door be open to many other abuses.

12. On hearing that settlers are establishing themselves, there shall be assigned to them pasture for beasts of the plough, either adjoining that which is laid out for sheep, or on the common of the mata which are adjacent thereto, and lying between points at the west and south of the site designated for the foundation of that settlement.

13. The allowance shall be at the rate of one thousand two hundred *estadales* as aforesaid, making three *fanagas* of land

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of the extent above mentioned, for each pair, and one head besides for relieving said pair.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Monday, the twenty-third day of said term, and the thirtieth of said month, the following entries were made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; and Daniel Hurlbert and Anthony Rutant were duly sworn as witnesses on behalf of the defendant, examined, and their testimony taken: whereupon the said defendant, by its counsel, offered in evidence the following documents, to the receiving of which in evidence the said claimants, by their counsel, objected; which objection was overruled by the court, and the same ordered to be received; which said documents are in the words and figures following, to wit:

TRANSLATION.

SIRE: Don Cristoval Gios, a native of New Orleans, and Pilot Particular of the Branch of Indies, with the greatest respect, represents to your Majesty, that, in consideration of the abandonment and want of population in East Florida, and particularly on the western coast thereof, and in consideration of the great advantages, political and commercial, which might be procured to the nation by establishments for fishing and planting, founded therein in a solid manner, your petitioner had for a long time meditated to repair to those parts, with a view to settle himself there, and stock them with inhabitants; to which he was stimulated by the following facts and motives:

1st. That province, bounded by the gulf of Mexico and the

United States, possesses two principal harbors, which are the bay of Spiritu Santo, and the bay and harbor of Carlota and San Carlos, which, if occupied by subjects of your Majesty, would serve as points of defence and rendezvous of forces, against any enemy who might attempt to commit hostilities against your dominions in the gulf of Mexico, and particularly against the Anglo-American nation, which, by its ambition and earnest desire to extend its possessions, has always been, and still is, coveting the dominion of the two Floridas, their wishes having been already realised, in part, by the purchase of Louisiana, so shamefully ceded to the tyrant of Europe, and by him sold to the said nation. The expedition of Miranda, and premeditated by Aaron Burr, against your American possessions, confirm, evidently, those suspicions; and in order to attempt similar attempts, it would be very convenient to depend, at some future day, on the united forces of those parts, and of the Havana, Pensacola, and Vera Cruz, in order to have the command of the said gulf, and defend our possessions. Such a measure would prevent the necessity, also, of sending forces to New Orleans, whenever it might be necessary; and the river Mississippi, and even the entrance of the lake St. John, within the distance of two leagues from the said city, might be blockaded, as the ports of the Havana and the Floridas are truly the keys of our American dominions.

2dly. The civilization of the Indians is an object deserving the greatest attention, in order thereby to increase the forces of the province; and, with a view to accelerate the reunion and the communication with the city of St. Augustine and its eastern coast, a royal road might be opened from the bay of Spiritu Santo to that port, as, at this day, there is no intercourse whatever between these two points.

578.

3dly. The increase, education, and multiplication of useful animals, both for labor and food, fish, fresh and salted, timber, boards, staves, pitch, and other naval stores, would diminish the foreign and increase the national trade; and the salt manufactories which may be established will serve to augment the royal revenue, and prove very useful to the people.

In consequence of this consideration, your petitioner humbly supplicates your Majesty, as there is no other mode of promoting the happiness of the faithful subjects who may be induced to follow him, during the present convulsions of Europe, to grant him the following favors:

1st. That the concession of lands now in a state of wilderness, from the latitude 29° north to Tancha point, inclusive, in latitude 24° 54" north, from the sea shores, including the small islands immediately on the coast, bounded by the gulf of Mexico, in East Florida, to the distance of fifteen leagues east of the said coast.

2d. That the colony be exempt of all taxes, free from the Alcobala duty, tithes, duties of exportation to the island of Cuba, and the interior provinces and Texas, the free importation of implements of agriculture and machinery, for the term of ten years.

3d. A perpetual permission, such as is enjoyed by a commercial house in West Florida, for the Indian trade, with a patent from your Majesty and from the English Government, for the introduction of goods necessary for said commerce, and the exportation of peltry and other produce of the colony for England.

4th. Exemption of duties to every Spanish fisherman concurring with your petitioner to supply with live fish the Habana and other parts of the island of Cuba, with prohibition

or high duties imposed on the Anglo-Americans, to whom, without precedent, this traffic has been permitted at this day, with great prejudice to national subjects.

5th. Permission to purchase vessels fit for fishing, and their introduction, with all the implements of fishing, from the United States.

6th. Permission of introducing handicraftsmen and cultivators from foreign parts, with the exclusion of Anglo-Americans and French people, also cultivators from Canary islands, and from the interior provinces and Texas, to whom lands will be distributed, that they may cultivate them, subject to contracts formal and authorized by the Government.

7th, and lastly. That your Majesty be pleased to extend his sovereign protection to this rising colony, by issuing the corresponding orders to the Governors of the province and of the island of Cuba, in order that no obstacle may be opposed to your royal favor, and to the prompt possession of the rights attached to it.

Royal Isle of Leon, on the 16th December, 1810.

GIOS.

Sire, a true copy.

JUAN YBAREZ.

TRANSLATION.

Prospect of advantageous establishments which may be formed in East Florida.

1st. In Tampa bay and its vicinity, from latitude 27° 30′ to 28° north, fisheries may be formed for almost all sorts of fish, oysters, and turtles, the exportation or sale of which is very good in Havana; the land comprehended excellent pastures for growing cattle, and is fit for the culture of Indian corn, rice, cotton, &c.

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2d. The bay Carlota, and that of San Carlos, offer the same advantages; fish in abundance, and lands fit for the culture of cotton, indigo, wheat, &c., and good pasture for the growing of cattle. This is in latitude 26° 30′ to 27° north.

3d. At the cape Roman, and the rivers de Galivar and St. Mary, the lands are calculated for the plantation of coffee, cocoa, and all colonial fruits; fishing is abundant, and all those places have harbors and places of shelter, secure from all winds.

A great advantage to said establishment will be received from the peltry or fur trade with the Indians, as it abounds among them, and is a considerable branch of commerce.

The growing of sheep is another useful branch, on account of the product of wool, and of their smoked or salted flesh, which sells well in the Havana.

In order to obtain laborers, it would be useful to travel in the interior provinces, such as San Antonio, El Soto de Marina, New Santader, &c., carrying salt fish, which sells well; and, after obtaining the superior permission, whole families could be procured from those provinces, among the class called Coyotes, which people are humble, and calculated for labor, and for an equitable salary, as negroes do not suit.

The vines, which grow wild, might be cultivated with little trouble, and they offer a profit.

Those parts abound with timber for ship and house building, and with small streams and useful waters for the erection of mills, and saw machinery for sawing timber, for making staves, tar, pitch, and turpentine, which might be exported for the supply of the island of Cuba.

On the coast, there are places where, at a little expense, salt could be made.

The chase of bears and of deers is plentiful, and offers a great gain.

Deer might also be domesticated, and their number would increase in a short time.

Privileges: That of carrying live fish to the Havana without prejudice to coasters; liberty of trade with the Indians, with the agreement of the English, who provide them with their necessaries; the purchase of vessels, necessary, useful, and fit for the importation of live fish; said vessels may be found or built in the United States; permission of introducing handicraftmen, and well taught cultivators, from foreign parts.

GIOS.

TRANSLATION.

From the office of the Secretary of State, and the Department of the Royal Domain, I received a petition, which was referred to the Council of Regency, by Don Cristobal Gios, a native of New Orleans, concerning the project of peopling a part of the coast of your province; and I send enclosed to your Excellency a copy thereof, in order that, on seeing what he exposes, your Excellency inform me of what sense and opinion you entertain of every particular, in order to fulfil what I am advised by the said minister. God preserve you many years. Habana, 29th of March, 1811.

THE MARQUIS OF SOMERNELOS.

To his Excellency the Governor of East Florida.

TRANSLATION.

MOST EXCELLENT SIR: In my official note of the 26th of June last, I informed your Excellency that I was making the necessary inquiries, in order to complete the information which your Excellency requires of me, concerning the petition and the project presented by Don Cristobal Gios, soliciting to peo-

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ple part of the southern coast of this province; which information is as follows:

Don Cristobal Gios, a native of New Orleans, petitions the King for the gratuitous concession of a territory situated on the western coast of this province, from 29° of latitude to 24° and 54', with an extent of fifteen leagues from the coast into the interior.

This territory, by the most moderate calculation, would comprehend six and a half millions acres, and English land measure used in this province.

1st. The project commences by exposing to the notice of the Government that on the said coast there are three harbors, the Espiritu Santo, Carlota, and San Carlos, which may serve as points of defence and rendezvous against any hostile attempts, if they were stocked with inhabitants and fortified; a truth which requires no demonstration.

2d. Follows the insinuation as a part of the project which would be equally advantageous to the province, that is to say, the civilization of the Indians, who are found in the contiguous parts of the country, and the opening of a royal road from the bay of Espiritu Santo to Florida,* as at this day there is no communication whatever between those points.

3d. It concludes with the undeniable truth that it would be equally advantageous to the province, and to the Royal Treasury, to promote the culture and the growth of useful animals, the fisheries, timber, and naval stores, which might be drawn from such an establishment, &c.

I understand that in the Captain General's office there are to be found the informations given by Don Vincente Folch, in the year 179 , concerning the three harbors referred to by

* By Florida, St. Augustine is meant.—Note of the Translator.

the petition, as the said officer had, by order of the King, been commissioned by his Excellency Don Lewis de las Cassas to make the survey, and execute the chart of the said coast, and to examine minutely the points which might suit for settlements, so that nothing could be added on the subject, having under your inspection said information, and the report made to your Excellency by his Lordship Don Enrique White, deceased, on the 3d of November, 1809, in his letter No. 1206, in consequence of a similar petition, preferred by Don Ricardo Raynal Keene.

That the civilization of the Indians in those parts would prove advantageous to this province, is a truth that needs no proof; but as Don Cristobal Gios mentions not the means that he is to use to obtain so laudable an end, it appears useless to discuss the point. Nevertheless, I cannot do less than to represent to your Excellency that this Government has never lost sight of the subject here alluded to, but it seems to me that with time only it could be obtained. Man in a state of barbarism approaches slowly and gradually that of civilization; and as far as I have been able to observe myself, and according to the inquiries I have made, those Indians will find themselves under the necessity, in a short time, to dedicate themselves entirely to the growth of cattle and the tillage of their lands, in consequence of the scarcity which they experience in their chase; already do they supply this place with the fresh beef it consumes, and many Indians own more than one thousand head of cattle. The savage, who from the state of a hunter passes to that of a herdsman and husbandman, has achieved the most difficult step towards civilization; and if it was not for the necessity under which the nation finds itself engaged to fight for its existence against the tyrant of Europe, and that, in consequence, it is impossible to subtract

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from their means of defence the funds necessary to carry into execution a project of this nature, it would be easy to me to demonstrate to your Excellency that the only mode of accelerating the civilization of the red people would be to continue, as has been done until now, giving them an equitable commerce, providing them now and then with implements of husbandry which they may want, and, above all, to appoint an agent to reside among them, as the Anglo-Americans do, whose knowledge would instruct them, and whose field labors would be an example to them; but this ought to be deferred to happier times.

All what Don Cristobal Gios says in third paragraph is undeniable; but it is to be observed, that he does not designate the means by which he intends to execute so vast a project, the project of peopling a country so extensive. The eastern coast of this province, notwithstanding that all the facilities which it has been possible to devise have been offered to new settlers, still has the three-fourths of its extent deserted. Here lands are distributed gratuitously, and the title of property issued after the expiration of ten years of non-interrupted culture; many, or the greater number, of both natives and foreigners, already established, or who come to establish themselves, would purchase said lands, rather than wait the long period of ten years, (a provision taken by this Government,) with a view to enjoy immediately the advantages of absolute property, and use said lands as they please, with the understanding of conforming to the royal dispositions; as I have already made known extensively to your Excellency, in my representation under date of the 19th of June last, letter No. 26. Here the new settler is admitted, with all his property, free from duties, and he finds also such succors as could not be held out to him by Don Cristobal Gios; so that, if any

subjects of his Majesty wish to emigrate to American dominions, here they will find land as fertile as those of Espiritu Santo, and a Government already established, and able to keep and protect them.

But the greatest obstacle to the project of Don Cristobal Gios, which remains to be ventilated, is, that the lands, the grant of which he solicits, are not royal lands; they are the property of the Indians, who view with great concern any usurpation, however insignificant it may be. The preservation of their lands is one of the bases of our friendship with them; and in all the harangues pronounced by the Governor of this province, the same treatment and privilege have been promised to them which were given to them by the British Government. Said Government ruled the country as sovereign, but it left to the Indians the ownership of the soil, with the exceptions of those parts which they had acquired from the natives by purchase, or by a solemn treaty made with their chiefs. The Anglo-Americans follow the same rule with the Indians who are found under their dominion: and it is proved to me that in the two Floridas the same rule has been religiously observed, and that no white person was permitted to buy lands from the Indians without the intervention of the Government, in order to prevent frauds; and it was strictly prohibited that any body should form a settlement in the territory acknowledged to be theirs.

In virtue of which, my opinion is, that, unless Don Cristobal Gios obligate himself to purchase from the Indians the territory which he solicits, and that said purchase be executed with the knowledge and presence of this Government, and of interpreters appointed by it, his project is more probably calculated to endanger the tranquillity of this province, and that therefore a perpetual silence ought to be imposed upon him.

God preserve your Excellency many years. St. Augustine of Florida, 29th of July, 1811.

JUAN JOSE ESTRADA.

His Excellency the Marquis of Someruelos.

The said defendant, by its counsel, also offered in evidence the following documents, to the receiving of which in evidence, the said claimants, by their counsel, objected; which objection was overruled by the court, and the same ordered to be received; which said documents are in the words and figures following, to wit:

TRANSLATION.

I send enclosed to your Excellency the expedient preferred by Don Ricardo Raynal Keene, a Spanish subject naturalized, soliciting a certain grant of lands in your province, in order that, on seeing what he exposes, you inform me of your opinion concerning the various points to which he refers in his petition, in conformity to the decree which I have put to it at this date.

God preserve your Excellency many years. Havana, 4th of September, 1809.

THE MARQUIS OF SOMERUELOS.

To his Excellency the Governor of East Florida.

TRANSLATION.

No. 1206.

MOST EXCELLENT SIR: The tract of land solicited by Don Ricardo Raynal Keene, extending from cape Sable, which is the southwest point of this peninsula in 24° 57′ to 29°, comprehends more than eighty leagues of coast in latitude, with expressing how far in the interior he means to proceed, from west to east. Within this extension is the bay of Tampa or Spiritu Santo, in latitude 27° 36′, where fishermen of the Ha-

vana usually resort, and in 30° 12′ is situated the fort of St. Mark of Apalachi.

From here, the only communication we have with those places is through some Indian towns in the vicinity of Tampa, whose inhabitants come in search of their yearly presents, and to sell cattle and deer-skins; they also are in the habit to go to the Havana, and would certainly oppose any settlement of white people on their lands.

The petitioner proposes to conduct the new settlers from the United States of America; and, by a royal order of the 14th of November, which your Excellency was pleased to communicate to me on the 9th of July, 1805, the citizens of the said States are prohibited to settle in the Floridas.

By a late regulation of this province, of which I informed your Excellency on the 15th October, 1803, fifty acres of land are allowed to each head of family of the new inhabitants, twenty-five acres to the children and slaves above sixteen years old. A *caballaria* contains thirty-three and a third.

This is all the information I can give to your Excellency in obedience to what you have ordered me to do in your official communication of the 4th of September last, in returning the original expedient.

May God, &c. St. Augustine of Florida, 3d of November, 1809.

Most excellent Sir,

E. W.

Most excellent Sir, the Marquis of Someruelos.

TRANSLATION.

Don Ricardo Raynal Keene, a naturalized Spanish subject, has presented to me a memorial, showing that there being in your

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province some remnants of land, uncultivated and unappropriated, belonging to the royal domain, to which they are of no use, but that it would be advantageous to distribute them to individuals; and he solicits that the necessary permission be granted to him, in order to purchase the same, in consideration of the pretensions which the Indians of that neighborhood may have to them; and I inform you of it, in order that you may report to me your sense and opinion concerning this pretension. God preserve you many years. Havana, 2d July, 1811.

THE MARQUIS OF SOMERUELOS.

His Excellency the Governor pro tem. of East Florida.

TRANSLATION.

MOST EXCELLENT SIR: To the pretension preferred to your Excellency by Don Ricardo Raynal Keene, a naturalized Spanish subject, concerning giving to him the permission of purchasing vacant or Indian lands, and to your request of my reporting to you my opinion on the subject, I say that I consider it judicious and advantageous to the progress of this province, the preservation of which is so important to the monarchy, if families establish themselves in those parts, as they would serve as a strong barrier in order to restrain and distance the savages from this vicinity. Nothing more occurs to me to be said on this subject, but that I refer to what I have reported to your Excellency in my official note of the 29th of July last, No. 41; and I have only to add, that, if it is permitted to Keene to buy lands, he ought to do it with the knowledge and in presence of this Government, with interpreters appointed to that effect, in order to prevent, at all events, the Indians from alleging and pretending that they have been cheated in the purchase

of their lands, and that it may not be cause of their committing hostilities in this province.

God preserve your Excellency many years. St. Augustine of Florida, 3d September, 1811.

Most excellent Sir,

JUAN JOSE DE ESTRADA.

His Excellency the Marquis of Someruelos.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Tuesday, the twenty-fourth day of said term, and the first day of December, the following entry was made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; whereupon, Antonio Alvarez was duly sworn as a witness on behalf of the claimants, and his testimony taken. Joseph M. Fernandez and George J. F. Clarke, who were sworn herein on a former day of this term, as witnesses in behalf of the claimants, were on this day again examined, and their testimony taken.

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Wednesday, the twenty-fifth day of said term, and the second day of December, the following entries were made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; whereupon the said claimants, by their counsel, offered in evidence the following extracts, taken from Clarke's Compilation of the Land Laws, at pages 973, 975, 994, 995, and 996, to the receiving of which in evidence, the said defendant, by their counsel, objected; which objection was overruled by the court,

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and the same ordered to be received; which said extracts are in the words and figures following, to wit:

No. 10. (Belongs to article 81.)

Royal regulation of October 15, 1754.

Experience having proved the inconveniences that arise to my subjects of the kingdoms of the Indies from the decree issued by royal order on the 24th November, 1735, that those who would enter upon the royal possessions of those dominions should necessarily apply to my royal person to obtain their confirmation within the time assigned, under the penalty of losing them in case of their failure to do so; and many persons having failed to avail themselves of this benefit, from their inability to sustain the expense of an application to this Court to obtain the confirmation of what they compromised for or purchased, it being of small amount, or some few caballerias, (lots,) and those who may apply for their purchases, being of greater value, are at great expense, on account of the testimony they must present, the transmission of money, the appointment of agents, and other necessary expenses, that usually exceed the principal sum paid for the composition or purchase of these royal lands before the Subdelegates; and as a consequence of this, much land is left uncultivated, which might support the province in which they are, by being cultivated, and grazing cattle; and it is another result that persons occupy lands illegally, through defect of title, without properly cultivating them, for fear of being denounced and prosecuted for it; and my royal treasury also suffering, both to the amount of the sales of these lands, and in the consequent neglect of agriculture and tending of cattle: I have, therefore, resolved, that, in the grants, sales, and compromises of royal cultivated and uncultivated lands, now made, or which shall hereafter be made, the provisions of the regulation shall be faithfully observed and executed.

12. In the distant provinces of the Audiencias, or where sea intervenes, as Caraccas, Havana, Carthagena, Buenos Ayres, Panama, Yucatan, Cumana, Margarita, Puerto Rico, and others in like situation, confirmations shall be issued by their Governors, with the advice of the Oficiales Reales, (King's fiscal ministers,) and of the Lieutenant General Letrado, where he may be stationed. The same officers shall also determine the appeals from the Subdelegates, who shall have been or shall be appointed in each one of the said provinces and islands, without recourse being had to the Audiencia or Chancery of the district, unless the two decisions be at variance, and then this is to be officially, and by way of consultation, to avoid the expenses of appeal. Wherever there shall be two Oficiales Reales, the younger in office shall be the advocate of the royal treasury in these causes, and the elder the associate Judge of the Governor, using the aid of counsel when there is no Auditor or Lieutenant Governor, and if the question is a point of law, by applying to any lawyer within or out of the district; and where there shall be but one Oficiale Reale, any intelligent person of the place may be appointed as the advocate of the royal treasury. It shall also be the duty of the Governors, with their associate Judges, to examine concerning the compositions of the Subdelegates, as provided in respect to the Audiencias.

No. 1. *Internal Regulations of Police.*

Don Juan Nepomuceno de Quesada, Colonel of the Royal Armies, Governor of this city of St. Augustine and province of East Florida, for his Majesty, &c.

Extract 1. I grant to all the inhabitants permanently settled, and subjects of his Majesty, in his royal name, for their use, the quantity of land they may require, in proportion to

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their force, in any part of this desert province, without any exception. To this end, those desirous of obtaining the same will present themselves to me within twenty days, stating their circumstances by memorial, what lands they have obtained to the present period, and in what quantity and in what place they are desirous of locating them now, under the precise condition that it will be without injury to a third person. I will attend to their solicitude, according to the examination I may make thereof; and although the laws of the Indies authorize me to make an absolute distribution of the same, and being in the case of the first of title 12th, book 4th, I abstain therefrom from powerful motives. But, for the greater security of those interested, I will forward my ideas and representations on the subject to the King, persuaded that, in consequence thereof, those obtaining grants from me now will be confirmed in the possession of the same.

(Here follow numerous regulations.)

A certificate of Domingo Rodriguez de Leon, Government Notary, as to the publication of the foregoing regulations; as also a note of the said Notary, attesting that a copy of said regulations was posted in the usual place pointed out.

St. Augustine, *September 2d*, 1790.

No. 2. Translation.

Havana, *October* 29, 1790.

I acknowledge the information given me by your lordship, under date of the 19th of September last, relative to Don Thomas Wooster, whose conduct and transactions gave cause for his leaving that province by order of the Government, of which I will inform his Majesty.

Relative to the introduction of families from Ireland, which your lordship proposes, I cannot accede on other terms than

strictly adhering to what the King has advised me on the subject, and herewith transcribe the same for your lordship's government.

"No settlers shall be admitted in Louisiana or Florida, should they pretend to have their transportation to those provinces, and maintenance there, for some time paid by the royal treasury. That those foreigners alone will be received who may of their own free will present themselves, and swear allegiance to his Majesty, to whom there shall be granted and measured land *gratis*, in proportion to the working hands each family may have. That they shall not be molested in matters of religion, although there shall be no other public worship than Catholic. There shall be given them no other assistance or aid than lands, protection, and good treatment, each family having the right of taking with them their property of any description, all free from duties; but, in case of exporting the same to any other place, they shall pay the six per cent. as established; and obliging them only to take up arms in defence of the province, should an enemy invade the same."

To which rules your lordship must adhere, in any solicitude that may occur under similar circumstances. God preserve your lordship many years.

LUIS DE LAS CASAS.

His Lordship Don Juan Nepomuceno de Quesada.

St. Augustine, Florida, December 12th, 1790. Take an account of the royal accomptant's office (a flourish.)——St. Augustine, Florida, December 12th, 1790, an account is taken in the accomptant's office, under my charge.

GONZALO ZAMORAM.

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And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Thursday, the twenty-sixth day of said term, and the third day of December, the following entries were made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties, by their counsel; and John Lee Williams was duly sworn as a witness on behalf of the claimants, and his testimony taken: whereupon the said claimants, by their counsel, offered in evidence the following five documents, to the receiving of which in evidence the said defendant, by its counsel, objected, "because they are mere copies, and the execution of the originals has not been proved, and because they are wholly irrelevant to the case;" which objection was overruled by the court, and the same ordered to be received: which said documents are in the words and figures following, to wit:

TRANSLATION.

HIS EXCELLENCY THE GOVERNOR: Don Juan McQueen, an inhabitant of this province, with all submission, represents to your Excellency, that, according to the number of negroes he possesses, the corresponding quantity of land has not been surveyed to him; for which reason, and inasmuch as his interests will be thereby promoted, he has determined to send Guillermo Courey, millwright, with ten or fifteen negroes, belonging to your petitioner, with a view to erect a water saw-mill, in order to saw pine and cyprus planks and boards, with which he will supply this city and the Havana; and having explored the river Miami, situated south of this place, where the said timber abounds, and of the best quality, your petitioner most humbly sup-

plicates your Excellency be pleased to grant him two thousand acres of land on said river, for the object which he has exposed, which favor he hopes to receive from the benevolence of your Excellency. St. Augustine of Florida, 29th October, 1795.

JUAN McQUEEN.

DECREE.

St. Augustine, 5th November, 1795. I grant to this party, for the purposes he indicates, the permission of forming an establishment in the place solicits; and as to the quantity of lands, when they will be surveyed, it will be made up to him out of the *caballarias* which may correspond to him above what he already possesses, and in conformity to the number of his family.

QUESADA.

TRANSLATION.

HIS EXCELLENCY THE GOVERNOR: Don James Samson, a new settler, received under the protection of his Catholic Majesty, with due respect, represents to your Excellency that agriculture is his occupation; and, wishing to become a planter, he supplicates your Excellency be pleased to grant him eight hundred acres in the province southwest of the river Miami, opposite south to the Bay Vizcayno Key, and five or six miles distant from the Key. Said tract is situated south of Musquitos, and the quantity to what corresponds to himself, to his daughter, sixteen years old, and twenty-nine negro slaves, whom he has declared to have in his oath, and all old enough to obtain the concession of twenty-five acres a head, in conformity to what has been lately granted by the Government; which favor your petitioner hopes to receive from the justice of your Excellency. St. Augustine of Florida, 25th April, 1804.

JAMES SAMPSON.

DECREE. 527

St. Augustine, 26th April, 1804. I grant to this party the land which he solicits, without prejudice to a third party, and until the time when, according to the number of workers whom he may have when the general survey will take place, the corresponding quantity will be assigned to him, with the condition that he ought to take possession of the said land in the term of six months from this date.

WHITE.

A certificate thereof was delivered.

PIERRA.

TRANSLATION.

His Excellency the Governor: Don Gariner Becker, a new settler, admitted under the protection of his Catholic Majesty, with all due respect and veneration, represents to your Excellency that he has taken the oath of allegiance and fidelity to his Majesty, with a desire to transport his family from New Providence, where he has resided, and to dedicate himself to agriculture; in virtue of which, and in order to be able to realise it, your petitioner supplicates your Excellency be pleased to grant him as much land as corresponds to himself, his wife, three children, and twenty-two slaves, of whom he has given his declaration, on the southwest side of the river Miami or Fresh Water river, the measurement thereof to begin northwest from the place which terminate the lands granted to Don Diego Samson; which lands he proposes to cultivate within the term of six months, or before if possible; which favor he hopes to obtain from the generosity of your Excellency. St. Augustine of Florida, 28th April, 1804.

GARDINER BAKER.

DECREE.

St. Augustine, 28th April, 1804. I grant to this party five hundred and fifty acres of land, which correspond to the family he has declared to have, without prejudice to a third party, and with the condition that he ought to take possession in the term of six months from this date.

WHITE.

A certificate thereof was delivered.

PIERRA.

TRANSLATION.

His Excellency the Governor: Don Samuel Sargent, a settler, admitted under the protection of his Catholic Majesty, with all due veneration represents to your Excellency that he has taken the required oath of fidelity and allegiance to his Majesty, with the sole intention to establish himself in this province, and devote his time to agriculture; and, in order to be able to realise said project, your petitioner supplicates respectfully your Excellency be pleased to grant him the land which may correspond to himself and thirty-two slaves, whom he has declared to have, southwest of the river Miami or Fresh Water river, the survey of which to begin northwest where terminates the lands granted to Don Richard Richardson; which lands he promises to improve in the term of six months. St. Augustine of Florida, 28th April, 1804.

SAMUEL SARGET.

DECREE.

St. Augustine, 28th April, 1804. I grant to this party eight hundred and ten acres of land, which correspond to himself and the thirty-two negroes whom he has declared to have, without prejudice of a third party, and with the condition

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that he should take possession of the said land in the term of six months from this date.

WHITE.

A certificate thereof was delivered.

PIERRA.

TRANSLATION.

His Excellency the Governor: Don Francisco Roman Sanchez, a native and inhabitant of this province, with due respect represents to your Excellency, that, south of the river called *Santa Fe*, and about ten miles distant west of the road leading from Alachua to St. Mary's, there is a great quantity of vacant lands, adapted to agriculture and the growth of cattle, to which he wishes to dedicate himself, to improve his means; and whereas your petitioner has never obtained any grant whatever, on which he may establish himself, with all his family and slaves; wherefore, he humbly supplicates your Excellency be pleased to grant him four thousand acres of land in the said place, bounded north by the said river Santa Fe, and on every other side by vacant lands; which number of acres is necessary both for the number of blacks whom he possesses, and for the growth of cattle referred to, and for many other objects peculiar to a planter; which favor he expects to obtain from the justice of your Excellency. St. Augustine of Florida, 18th December, 1815.

FRANCISCO R. SANCHEZ.

DECREE.

St. Augustine, 18th of December, 1815. In attention to the urgent necessity which exists to promote in this province, by all possible means, the growth of neat cattle, on account of the great scarcity of that article, I grant to the petitioner the four thousand acres of land in the place he solicits, without preju-

dice to a third party; and for his security, let a certified copy thereof be issued to him from the Secretary's office, both of the petition and of the decree.

ESTRADA.

The said claimants, by their counsel, then offered in evidence the following translation of a document, the execution of the original of which was satisfactorily proved to this court; to the receiving of which in evidence, the said defendant, by its counsel, objected, on the ground of its irrelevancy; which objection was overruled by the court, and the same ordered to be received; which said document is in the words and figures following, to wit:

TRANSLATION.

His Excellency the Governor: Don Juan Nepomuceno Gomez, priest, and an inhabitant of this city, with due respect appears before your Excellency, and says, that, in the course of twenty-eight years of residence in this province, he never participated in many advantages and favors which the liberality of the sovereign has granted, and grants still plentifully, not only to the patricians and natives, (of whom your petitioner is one,) but also to the very strangers who come to establish themselves here. By a truly sorrowful experience, your petitioner is completely undeceived, and finds that he is not able to fulfil his precise and indispensable duties, and attend to the wants of his aged parents, if he does not dedicate himself to some other honest branch of industry, as his salary is not only very limited, but is not paid with punctuality, as said wants would require; and whereas his character prohibits him to embrace and undertake the occupation of trade, or any other of the same nature, the licit and honorable employment left only to him is that of agriculture, to which he has resolved to dedicate all the time which he can spare from his ministerial occu-

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pations, and which, as the felicity of the province and abundance flow from it, is carefully protected by the Government, in order to meet the wishes of his Majesty, who so much recommends it. I, in consequence whereof, and as there are at this day various royal lands, amongst which there is one on the west side of the river St. John's, opposite the place known under the name of Horse Landing, and another south of the river Okeloaka, beginning at three or four miles from the mouth of the river, your petitioner supplicates your Excellency be pleased to grant him four thousand acres of land in the said places, that is to say, two thousand acres in each of them; which favor he will consider, at the same time, as a reward of his merits, and of the services which he has rendered in the course of twenty-one years, during which he has economised and benefitted the royal treasury very near the amount of three thousand and five hundred dollars, because he only receives the monthly pay of thirty dollars, as having the charge of primary schools, although the total of the royal assignment amounts to forty-eight; and in consideration, also, of his having been always one among the first who have repeatedly contributed to the voluntary donations which have been made here. Wherefore, your petitioner humbly supplicates your Excellency be pleased to grant him the four thousand acres of land he solicits, in the indicated places; which favor he hopes to receive from the benevolence of your Excellency. St. Augustine of Florida, 22d August, 1815.

JUAN NEPOMUCENO GOMEZ.

DECREE.

St. Augustine, 1st September, 1815. In attention to all the parts of the just petition of this party, his merits, services, and economy, in behalf of the royal domain, which are sufficiently

notorious and well known to me, I, acting in conformity to the faculty conferred on me by His Majesty in his royal order of the 29th of March last past, concerning the gratuitous distribution of lands to the servants of the country, one of whom I consider the petitioner to be, I do grant him the four thousand acres of land which he solicits, in the place which he indicates; in virtue of which, let the corresponding certificate be issued to him from the Secretary's office, which, at all events, will serve him as a title in form.

ESTRADA.

The said defendant, by its counsel, then offered in evidence the following document, to the receiving of which in evidence the said claimants objected, "because the same is not properly authenticated, its execution not being proved, and because the document itself is altogether irrelevant to the case, and also because the said document is a copy and not an original;" which objections were overruled by the court, and the same ordered to be received; which said document is in words and figures following, to wit:

TRANSLATION.

The King. My Governor of the Floridas: By my royal orders of the sixth of February, and of the ninth of April last, I thought fit to grant, respectively, to the Duque of Alagon, the Count of Punon Rostro, and Don Pedro de Vargas, residents of this court, several parcels of land, situated in your district, according to the delineation which is expressed in each of them, and with the laudable object in view that they should promote the population and culture thereof, charging you to aid that enterprise in conformity to the laws which are in force concerning that subject; but having understood that the high policy which I proposed to observe was jeopardied, and that, in opposition to the only meaning and the true spirits of the laws

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indicated, the alienation of said tracts of land in favor of strangers was treated of, I charged my Council of the Indies, by my royal order of the twenty-eighth of the same month of April, that, in order to avoid all motives of doubt or interpretation concerning the precise terms on which said bounties ought to be understood to have been made, it would explain to every one of the interested parties the rules to which the law subjects them, and also my sovereign will, which is, that they cannot alienate the said lands, and much less to strangers. This royal order being made known in my Council, it thought fit to hear thereupon my chamber of accounts and my Fiscal; and, in consequence of what they exposed, it prepared the punctual execution thereof, for which it gave, together with its insertion and instruction to every one of the grantees on the eleventh of July last, upon the contents of the laws of Indies, and especially of those comprehended in the titles fifth, sixth, seventh, and twelfth, in the fourth book, in the following terms:

Law 1st and 2d, title 5th. "That the founders of new colonies in the dominions of Indies take care to establish the settlements in places healthy, fertile, and abundant in every necessary of life, and provided with good inlets and outlets, both by sea and land."

Law 3d, title do. "That for husbandmen and handicraftsmen, Indians may go spontaneously, provided they are not of those who are settled already, and have houses and lands, nor of those who are distributed."

Law 6th, title do. "That, in order to form a town with Spanish inhabitants, by way of settlement, the capitulation be made with these qualifications: that, within the term specified therefor, it contain at least thirty inhabitants, having each of them a house, four oxen, or two oxen and two year-

lings, ten breeding cows, one breeding mare, one breeding sow, twenty breeding ewes of Castile, six hens and one cock, with a church provided with necessaries, and a chaplain."

Law 11*th*, *title do.* "That a town formed in this manner have the civil and criminal jurisdiction for the term of two lives, with the faculty of appointing a Mayor and Council."

Law 2*d*, *title* 6*th.* "That the first founder or inhabitant, going to the new settlements from these kingdoms, pay no custom-house duties, nor any other royal duties, for what they might carry for their houses and support in the first voyage."

Law 3*d*, *title do.* "That the same may use offensive and defensive arms, in giving security that they will not make a bad use of them."

Law 5*th*, *title do.* "That they be personally preferred, with respect to counties and commanderies, although they were not married."

Law 6*th*, *title do.* "That the persons, children, and lawful dependents of those who would obligate themselves to form a settlement and execute it, be gentlemen of noble descent."

Law 1*st*, *title* 7*th.* "That the province or territory intended to receive a population, and the site of the new towns, be elevated, healthy, and strong, a due consideration being paid to the shelter, the bottom, and the defence of the harbor; and that, in those and other interior lands, vacant places be selected, without prejudice to the Indians and natives, or with their free consent; observing, in the construction of houses and streets, the method and order most conform to good taste and ornament of the said towns."

Law 2*d*, *title do.* "That the Governor of the district, having knowledge of the said circumstances, declare whether the settlement about to be forwarded is to be a city, a town,

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or a village; and, in consequence, a Council will be formed, with a Judge, or Mayor, or Corregidor, or Magistrate Ordinary, a Board of Aldermen, and other public officers corresponding to each of the three classes."

Law 6th, title do. "That no population can be placed in seaports, nor in any part which at any time may become detrimental to the king and to the republic."

Law 7th, title do. "That the land indicated to establish a population thereon by capitulation, be distributed in convenient parcels in this manner: the corresponding parcel to build thereon, commons, pasture grounds for cattle, and let the remainder be divided in four parts, one for the individuals bound to perform the settlement, and the other three parts to be distributed, by lots, to the inhabitants and settlers."

Law 20th, 21st, and 25th, title do. "That he make the assessments for the population, take care that the same be carried into effect within the specified term, keeping an account of the progress made; that the aldermen and proctors claim earnestly against the settlers who may not have fulfilled their obligations within the specified time, and the justices rigorously compel them, according to law, unless some fortuitous accident has prevented them, in which case the Governor may prorogue the necessary time."

Law 2d, title 12th. "That to those who, in forming the population of a province or district which possess lands and lot in a town, no distribution be made in another, unless they should relinquish entirely their first residence, unless they have lived in it during the four years provided by law, in order to acquire the ownership thereof."

Law 3d, title do. "That those who accept the assessment made to form the population obligate themselves to have their lots built upon, the house inhabited, the lands distributed in

a state of culture, the plantations made, and other stipulations fulfilled, under pain to lose the whole."

Law 9th and 10th, title do. "That the seats and lands which might be given to Spaniards be so granted without prejudice to the Indians, to whom they will be necessarily restored, if they are proved to belong to them; and that in no case lands be sold to a church, convent, or clergyman, under pain of losing them."

Law 11th, title do. "That all the inhabitants and residents to whom lands might be distributed be obligated to take possession of the same within three months, and fix the metas and limits which they might have with other lands by a plantation of willows and trees, if the season permits, in order to place them in a good and peaceful disposition; and those who will not do it shall lose them."

Law 12th, title do. "And that the sites destined for cattle in the new settlements be separated from the towns and plantations belonging to Indians, in order to avoid all prejudice to them; and in case they should receive any, the justices will take care to see them indemnified."

And the same tribunal having given an account of the whole, at the same time that it has merited by approbation, I have resolved that you should be informed of it for your government. In consequence thereof, I order and command you, that, in case the said orders of the 6th of March, and of the 9th of April, of this year, should be presented to you by all or each one of the grantees, for the fulfilment thereof, you dispose what is convenient, in order that their execution take place, and be understood subjected to the laws comprehended in the titles above explained; and, moreover, with the precise qualification that the indicated tracts cannot be alienated, and much less transferred to strangers; in which last case,

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the said grants will be considered as null and void; for this is my will; and let an account of the same be taken in the office of the Comptroller General of the Indies. Given in the Palace, on the tenth of August, one thousand eight hundred and eighteen.

I, THE KING.

By order of the King, our Lord. (Three flourishes.)

SILVESTER COLLAR.

Officially. (A flourish.)

To the Governor of the Floridas, informing him of the precise terms in which the tracts of land ought to be used, which, by royal orders of the sixth of March, and of the ninth of April last, were granted in that district to the Duque of Alagon, the Count of Punon Rostro y Don Pedro de Vargas, Presidents of this court.

CORR^DA. (A flourish.)

And afterwards, at the same term of November, in the year of our Lord one thousand eight hundred and twenty-nine, to wit, on Friday, the twenty-seventh day of said term, and the fourth day of December, the following entries were made of record, to wit:

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

This day came the parties by their counsel; whereupon, the said claimants, by their counsel, offered in evidence the testimony of the following witnesses, taken before Richard Riker, Recorder of the city of New York, certified under his hand and seal, to wit: Nehemiah Brush, Elisha Huntington, Mordecai Myers, Legrand Jarvis, Samuel R. Ayres, Warmoldus Cooper, Thomas C. Doremus, John West, and John M. Lowry; it having been heretofore proved before this court that the

said Samuel R. Ayres, one of the above named witnesses, hath departed this life, and that the other witnesses abovenamed reside beyond the reach of this court's process. To the receiving of said testimony in evidence, the said defendant, by its counsel, objected; thereupon, Davis Floyd, formerly one of the Commissioners for adjudicating claims and titles to lands in East Florida, was duly sworn, and proved to the satisfaction of this court that the said testimony of the said witnesses had been received in evidence before the said Board of Land Commissioners; and thereupon the court overruled the objection of the said defendant, and ordered that the said testimony be received in evidence in this case.

The said parties, by their counsel, then entered into, and filed in open court, the following agreement, to wit:

Documents, regulations, law, &c. &c., introduced and read on the part of the claimants.

Ruperta Saavedra's letter to the Governor of East Florida, dated 18th January, 1819, and Governor Coppinger's confirmation of the opinion contained in the aforesaid letter, of the same date. Found in White's Compilation, from page 255 to 259, inclusive.

The letter of Richard Rush, the Secretary of the Treasury, to the Speaker of the House of Representatives of the United States, dated Treasury Department, February 21, 1826, as found in the 6th volume of the Executive Papers, together with report No. 2, which was transmitted to the said House of Representatives with the said letter; which report is marked Doc. 115, E, as found in the above volume of Executive Papers.

And also report No. 3, which was also transmitted to the said House of Representatives with the said letter; which

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last report is marked 115, F, as found in the above volume of Executive Papers.

The translation of the grants of the King of Spain to the Duque of Alagon, Count de Punon Rostro, and Don Pedro de Vargas, as found in Clarke's Compilation, pages 67, 70, and 72.

The memorial and claim of Teresa Rodriquez, to the Commissioners appointed to ascertain claims and titles to land in East Florida. The translation of the application of the said Teresa Rodriquez to Governor Estrada, for the land claimed, and Governor Estrada's decree thereon, together with the decree of the Board of Commissioners, recommending the claim for confirmation, as found in the 6th volume of Executive Papers, pages 91 to 93, inclusive.

The claim of Joseph Delespine, before the Land Commissioners of East Florida, for a confirmation of his title to ninety-two thousand one hundred and sixty acres of land, together with the whole of the documents and proceedings therein, including the decree of the said Land Commissioners, recommending the same for confirmation, as found in the 6th volume of Executive Papers, from page 102 to 111, inclusive.

Law concerning the sale, composition, and distribution of lands, lots, and waters.

Lib. 4, tit. 2, law 1, White's Compilation, page 38.

White's Compilation, p. 34, lib. 4, tit. 5, law 6.
p. 34, lib. 4, tit. 5, law 7.
p. 35, lib. 4, tit. 5, law 9.
p. 39, lib. 4, tit. 7, law 25.

Extract from the royal ordinance for the establishment and instruction of the Intendants of the Army and province in the kingdom of New Spain.

White's Compilation, page 56, 57.

Do	do	do	81, — law 24.
Do	do	do	80, — law 2.
Do	do	do	78, — law 34.
Do	do	do	79, — law 35.
Do	do	do	" — law 36.
Do	do	do	" — law 25.
Do	do	do	80, — law 30.
Do	do	do	25, — lib. 2, tit. 18, law 36.
Do	do	do	37, — lib. 4, tit. 7, law 23.

White's letter to the Secretary of State, introductory to his compilation, p. 7, 9.

So much of the proceedings of the Board of Land Commissioners, on the 17th November, 1823, as relates to the claim of the heirs of James Hutchinson for confirmation of their title to two thousand acres of land, as found at page 168 of the 11th vol. of State Papers.

A descriptive list of records, documents, laws, ordinances, and royal regulations, which were offered and read in evidence on the trial of this cause, on behalf of the United States, and which are to be referred to and considered, as stated in the agreement herewith filed:

First. The second section of the royal regulations of Oct. 15th, 1754, Clarke's Land Laws, p. 973, White's Compilation, p. 50;

Second. The 81st section of a royal ordinance, marked (B,) Clarke's Land Laws, 972 and 973, White's Compilation, p. 57;

Third. Laws 7, 9, 10, 11, 12, 14, 16, 17, 18, 19, and 20, Recopilacion de Indies, title 12, book 4, White's Compilation, page 39 to 43, Clarke's Land Laws, 968 to 971, and laws 13 and 38, page 25 of White's Compilation;

Fourth. Regulations for the new settlements of Sierra Mo-

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rena, article 8, p. 105, article 57, p. 110, and article 60, p. 111, of White's Compilation;

Fifth. Articles to be observed in restoring the settlement in the city of Salamanca, article 15, p. 124, and articles 16 and 17, page 125, of White's Compilation;

Sixth. General regulations and instructions of Morales for conceding lands, White's Compilation, p. 208 to 217, Clarke's Land Laws, p. 981 to 986;

Seventh. Governor White's regulations for conceding lands in East Florida, Clarke's Land Laws, No. 7, page 1001, White's Compilation, p. 246 and 247, Executive Documents, vol. 11, p. 16 to 18, (No. 156,) together with Governor White's letter to the Captain General, Clarke's Land Laws, page 1002, Executive Documents, vol. 11, page 19, (No. 156;)

Eighth. Instructions to Captain Don Pedro Marrot, Clarke's Land Laws, No. 4, p. 988;

Ninth. Governor White's letter to the Captain General on the subject of the claims of Gideon Dupont, White's Compilation, p. 229 to 232;

Tenth. No 42. White's Compilation, pages 242 to 245, including two letters of Nicholas Garrido, one of Ruperto Saavadra, and a decree of Governor Coppinger;

Eleventh. A report of Ruperto Saavadra to Governor Coppinger, White's Compilation, pages 242 to 245, together with the Governor's *decree* thereon, p. 253 of the same book;

Twelfth. General report upon Spanish claims, Clarke's Land Laws, pages 1042 to 1045;

Thirteenth. General report upon large grants, Clarke's Land Laws, pages 1045 to 1047;

Fourteenth. Letter of Governor Estrada to the Marquis of Someruelos, Clarke's Land Laws, No. 10, p. 1005, Executive Documents, (No. 158,) vol. 11, pages 57 and 58, White's Compilation, pages 235 and 238;

Fifteenth. Letter of the Marquis of Someruelos to Governor Estrada, in reply, White's Compilation, p. 237, Clarke's Land Laws, pages 1005 and 1006, Executive Documents, vol. 11, p. 58, (No. 158;)

Sixteenth. Spanish decrees in relation to land claims in Florida, Executive Documents, (158,) vol. 11, pages 73 to 75, certified by William Reynolds, June 27th, 1823;

Seventeenth. Edict of Governor White, Executive Documents, (158,) vol. page 54 to 56;

Eighteenth. Letter of Alexander Hamilton to the Secretary of State, dated May 12th, 1824, Executive Documents, vol. 11, page 13, No. 158;

Nineteenth. Letter of Alexander Hamilton to the Honorable Christopher Rankin, Chairman of the Committee on Public Lands, dated 24th May, 1824, Executive Documents, vol. 11, page 14, No. 158;

Twentieth. Report of Alexander Hamilton, one of the Commissioners for ascertaining claims and titles to lands in East Florida, dated May 11th, 1824, Executive Documents, vol. 11, page 14 to 32, No. 158.

It is hereby agreed by the counsel for the United States, and for the claimants, that all the abovementioned letters, papers, reports, and documents, and also all the aforegoing Spanish laws, regulations, ordinances, and royal orders and edicts, above referred to, stated, and cited, shall be considered as having been offered and read in evidence in this cause in this court by the said United States and the said claimants respectively. And it is further agreed by and between the said counsel for the said parties, that the said letters, papers, reports, documents, law regulations, ordinances, or royal orders and edicts, shall not be entered on the record in the cause; but that the same may be referred to in the Supreme Court of the

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United States, (if the said cause shall be carried there by appeal,) and shall in the said court be entitled to the same consideration, credit and effect as if the said letters, papers, reports, documents, laws, regulations, ordinances, and royal orders and edicts had been entered on the record *in extenso*, as evidence in this cause; and that they shall be subject only to the same objections and exceptions as they would be if they had been entered on the record in the said cause. And it is understood that this agreement is not intended to exclude from the notice and consideration of the Supreme Court any letter, paper, report, document, law, regulation, ordinance, royal order or edict, which is not herein above referred to, and which could without this agreement have been referred to and considered by the Supreme Court.

The following are copies of the affidavits of the Law Agent of the United States for Florida, and of the Attorney of the United States for this district, alleging causes for a continuance of this cause, read and herein filed on the 12th and 13th of November, in the year one thousand eight hundred and twenty-nine:

THE UNITED STATES
ads.
F. M. ARREDONDO & OTHERS. } *Affidavit for continuance.*

Richard C. Allen, United States Law Agent for the Territory of Florida, being duly sworn, states, that he does not believe the United States can go safely into the trial of the above cause at the present term of this Court, for the want of evidence material and pertinent to the issue. Affiant farther states, that he did not know certainly of the existence of such testimony in time to procure the attendance of witnesses to this term of the Court, or to obtain the testimony under commission in time for the present term. Affiant is informed,

and believes he can prove by Jacob Summerall, of the county of Alachua, and others, whose names are at present to him unknown, that the tract of land mentioned in the petition was in the occupation of the Seminole or lower Creek Indians at the date of the concession or grant under which the said Arredondo and Son and others, parties to this suit, now claim; and that said Indians continued to occupy and possess said tract of land up to the date of the treaty held at Camp Moultrie, in East Florida, on the day of September, in the year 1823, between the United States and said Indian tribes. Said affiant is farther informed, and believes he can prove, that, if said Indians ever did abandon the occupancy and possession of said lands previous to the date of said concession, such abandonment was temporary, and was induced by the approach of an enemy, who forced them from their settlements and villages; that such abandonment was, if it ever occurred, not voluntary, but forced and compulsory; that said Indians resumed the occupation and possession of said tract of land as early thereafter as they could with safety, and previous to the date of said concession. Affiant believes the evidence referred to material for the United States on the hearing of this cause. Affiant farther states, that, owing to his ignorance, until lately, of the existence of individuals who could prove the facts herein above contained and mentioned, it has not been in his power to procure said testimony in a regular manner in time for the present term of the Court. Affiant hopes and believes he will be able to obtain the testimony referred to by the next regular term of the Honorable the Superior Court for the Eastern Distric of Florida. This continuance is not asked for delay, but because this affiant believes it necessary for the protection of the rights and interests of the United States, and that justice may be done in the premises.

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Affiant states that he believes the Spanish Government recognised the right of possession and occupancy in the said Indian tribes.

R. C. ALLEN,
U. S. Law Agent for Florida.

Sworn to before me in open Court, this 12th November, 1829,

GEO. GIBBS, *Clerk.*

THE UNITED STATES *ads.* F. M. ARREDONDO & OTHERS. } *Affidavit for continuance.*

Thomas Douglass, United States Attorney for the District of East Florida, being duly sworn, states, that he believes that the United States cannot safely proceed to the trial of the above cause at the present term of this Court, for the want of certain documentary evidence, which this affiant considers material and pertinent to the issue in said case, to wit: duly certified copies of all the treaties which were made by and between the Government of Great Britain and those tribes of Indians who claimed and occupied that portion of Florida where the land claimed by the petitioners is situated, during the time which elapsed between the years 1763 and 1783, several of which, this affiant is informed and believes, were made; which said treaties, this affiant is informed and believes, conferred upon and guarantied to the said tribes of Indians a right to that portion of this country where the said lands are situated: this affiant is also informed and believes, that, since the said year 1783, the Spanish Governors of East and West Florida have, by the authority of the Government of Spain, held several talks with, or, to use the language of one of said Governors, delivered to them several harangues, by which the said Spanish Government, for good and valuable considerations therein expressed, bound itself to guaranty,

and did thereby guaranty, to the said Indian tribes, the same rights which they had held under the British Government: and this affiant further saith, that he considers the said talks (or harangues) material and pertinent evidence for the United States in this cause, and that they cannot go safely to trial without them: and this affiant farther saith, that he wrote, about the first of May last, to George Graham, Esq. Commissioner of the General Land Office, with whom he corresponds upon all subjects relating to the public lands, requesting to be furnished with certified copies of those treaties; and that he was soon afterwards officially advised that measures had been adopted to procure them; and that he has lately been informed that Mr. Barbour, Minister of the United States, was directed, or written to, early in the month of June last, to procure them; and this affiant is daily expecting to receive them: and this deponent farther states, that he caused an examination to be made, several months ago, in the public archives of East Florida, for documents in relation to the Indian department, and that none could be found; that, since that examination, and within a few weeks past, he has been informed and believes that the said documents were withdrawn from the said archives by Captain Bell, and by him were delivered over to Governor Worthington; and that there was amongst those documents a talk, or harangue, which was delivered by Governor Quesada, the Spanish Governor of East Florida, to the said tribes of Indians, about the year 1792 or 1793, by authority of the said Spanish Government, in and by which all the rights which the said tribes of Indians had held under the British Government were guarantied to them: this affiant farther saith, that, as soon as he received the last mentioned information, he wrote to Richard C. Allen, Esquire, Law Agent of the said United States, to examine the office of the

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Governor of this Territory, to ascertain if the said last mentioned documents were to be found there; and that his letter must have reached the said Law Agent just about the time that he was to leave Tallahassee to attend the present term of this Court; and that this affiant is informed by him that he made the said search in vain: this deponent therefore supposes that the said Worthington must have taken the said documents with him to Baltimore, in the State of Maryland, where this affiant is informed that he now resides; and that, if this cause is continued, measures will be forthwith taken to have them returned to said archives, where they properly belong, so that the counsel for the United States can have access to them, and be able to adduce duly certified copies of them in evidence in this cause. This deponent further saith, that he considers the Residencias of the Spanish Governors of the province of East Florida, and of Alexander Ramirez, Intendant, and by whom it is claimed that the grant on which this suit is founded was made, to be a material portion of the evidence of the United States in this case, and that they cannot safely proceed to trial of this cause without; and that, about the first of May last, he wrote to George Graham, Esquire, Commissioner as aforesaid, requesting to be furnished with copies of them; and that he believes suitable measures have been taken to procure them, and that they will soon be furnished to the counsel of the United States in this cause. This deponent saith farther, that, in relation to the above documents, he speaks from information, not having seen them. And this respondent farther saith, that he deems the testimony referred to in the affidavit of Richard C. Allen, Esquire, Law Agent as aforesaid, filed in this cause on yesterday, to be very material; and that he did not know of any individual by whom these facts could be proved until they were mentioned to him by said Law Agent, since the

present term of this Court, although he has made much inquiry on the subject. And this deponent farther saith, that, at that the present term of this Court, the petitioners have offered in evidence the testimony of Nehemiah Brush and others, which they allege was taken and received before the Board of Commissioners; and that it appears by the said testimony, and the admissions of the said petitioners, the said Nehemiah Brush, and several of the other witnesses whose testimony is thus offered, are interested in this cause, and were so when their testimony was taken; and that it does not in any way appear, unless it be by the testimony of William H. Allen, Esquire, one of the Commissioners, that said testimony was taken before the said Commissioners: this deponent therefore deems it important to the United States to take the testimony of Edgar Macon, late United States Attorney for this District, who acted in his official capacity before the said Board of Commissioners when the claim which is the foundation of this suit was before said Board of Commissioners for examination, to show that said testimony was rejected by the said Board of Commissioners; and that he has reason to believe that said Macon's testimony would show that fact; and that his testimony can, as this affiant believes, be procured without any considerable delay, as he resides, as this affiant believes, at Key West, in this Territory: that this application is not made with a view to procure delay for any other cause than to subserve the purpose of justice; and that this deponent does not know of any other witness by whom the fact can be proved, it is wished to prove by Edgar Macon, Esquire: and farther saith not.

THOMAS DOUGLASS.

Sworn to before me, in open court, this 13th day of November, 1829. GEO. GIBBS, *Clerk.*

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Superior Court East Florida, November Term, 1829.

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

The following is a statement of the mesne conveyances filed and exhibited in evidence in this cause by the claimants, the execution of which have been duly proved, or admitted in evidence by the counsel for the United States, to wit: Fernando M. Arredondo and Son to Peter Michel, for 72,411¼ acres, or one-fourth part of the grant to Arredondo and Son, dated the twenty-first of January, one thousand eight hundred and twenty-two; Fernando M. Arredondo and Son to Moses E. Levy, for 36,205 acres, or one-eighth part of said tract, dated the thirteenth of January, one thousand eight hundred and twenty-four; Fernando M. Arredondo and Son to Alexander M. Muir, William Thorn, and Noah Jarvis, for 30,720 acres of said tract, dated the eleventh of February, one thousand eight hundred and twenty-two; Fernando M. Arredondo and Son to Elisha Huntington, for 10,000 acres of said tract, dated the fourth of September, one thousand eight hundred and twenty-one; Fernando M. Arredondo and Son to Nehemiah Brush, junior, for 10,000 acres of said tract, dated the fourth of September, one thousand eight hundred and twenty-one; Fernando M. Arredondo and Son to Nathaniel Wells, for 30,000 acres of said tract, dated the second of July, one thousand eight hundred and twenty-one; William W. Wells, Benjamin Wells, and Cinthia Wells, heirs of Nathaniel Wells, deceased, to Jeromus Johnson, for 6,500 acres of said tract, dated the fourteenth of October, one thousand eight hundred and twenty-seven; Thomas Gibbons to Abraham A. Prall, for 1,000 acres of said tract, dated

the twentieth of January, one thousand eight hundred and twenty-six; Elihu Woodruff to Ichabod Prall, for 1,000 acres of said tract, dated the twenty-seventh of October, one thousand eight hundred and twenty-five; and two conveyances from Nathaniel Wells to Isaac Marquard, for one thousand acres of said tract, each, dated the third of January, one thousand eighteen hundred and twenty-three.

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

The following is the testimony, taken under a commission duly issued from this court, in this cause, and directed to Colin Mitchel, Robert Morrison, Vincente Gray, and Joseph Dauphin, Commissioners appointed to examine Juan Nepomuceno de Arrocha, Francisco Gutierrez de Arroyo, and Winceslao de Villa Urrutea; which commission, executed as hereinafter appears, was duly returned to the Clerk's office of this court; and the interrogatories and cross-interrogatories, answers and certificates, annexed to the said commission, are in the words and figures following, to wit:

Superior Court for East Florida.

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA.

Interrogatories to be administered to Don Francisco Gutierrez de Arroyo, Juan Nepomuceno de Arrocha, and Winceslao de Villa Urrutea, witnesses to be sworn and examined in the above entitled cause, on the part of the claimants in said cause.

First. Please to look at the annexed instrument of writing, purporting to be an original grant of land in East Florida, at

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a place called Alachua, and to have been made by the Spanish Government, under the administration of Don Alexandro Ramirez, Intendant of the Army, and Superintendent General Subdelegate of the Royal Domain of the Island of Cuba and the two Floridas.

Second. Are you acquainted with the handwriting of said Alexandro Ramirez, Intendant as aforesaid? If so, declare whether, according to the best of your knowledge and belief, the signature of the said Alexandro Ramirez to the annexed instrument of writing, purporting to be an original grant as aforesaid, is really and truly in his handwriting.

Third. Do you not know, and is it not a matter of public notoriety, that the said Ramirez, at the time that the annexed instrument of writing, and purporting to be an original grant as aforesaid, bears date, held the office and exercised all the functions and the powers of Intendant, &c. &c. &c. of the Island of Cuba, as set forth in said annexed grant?

Fourth. If there is any other matter or thing which you know, and will be of service to the claimants, please to state it as fully as if you were specially interrogated thereto.

JOHN RODMAN,
JOHN DRYSDALE, and others,
Attorneys for Claimants.

Cross-interrogatories to be administered, on behalf of the United States, to Juan Nepomuceno de Arrocha, Francisco Gutierrez de Arroyo, and Winceslao de Villa Urrutea, the above named witnesses.

First. Please to say whether you have ever before seen the instrument of writing in the first preceding direct interrogatory mentioned, and, if you have, when, where, upon what occasion, what drew your attention to it, and in whose posses-

sion or keeping it now is, and particularly whether you ever saw the said instrument on file in any public office, and, if you did, when, and in what office, and what circumstance caused you to notice it, and what is the proper office for the deposite of instruments of this description, and whether the said instrument is now in the possession or keeping of the same person or persons that it was when you first saw it, and, if it is not, in whose possession or keeping was it when you first saw it.

Second. If you answer the second preceding direct interrogatory in the affirmative, please to say whether you became acquainted with the handwriting of said Alexander Ramirez from having seen him write or otherwise, and, if otherwise, how, and particularly when you first became acquainted with said handwriting, and the opportunities which you have had of becoming acquainted with it.

Third. If you answer the third direct preceding interrogatory in the affirmative, please to state how you know that the said Alxeander Ramirez, at the time the said instrument bears date, held the office and exercised all the functions and powers of Intendant, &c. &c., as set forth in said instrument of writing, or how you know that it was a matter of public notoriety that he did so. State particularly, if you please, whether you resided in Cuba at that time, and the opportunity which you had of personally knowing these matters, and whether *you know* that the said Alexander Ramirez had any power to act as a *Subdelegate*, and, if aye, how you obtained that knowledge.

Fourth. If you know of any other matter or thing which may be of service to the United States on the hearing of this cause, please to state it as fully and particularly as though you were now specially interrogated thereunto.

THOMAS DOUGLASS,
United States Attorney.

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I hereby reserve to the United States the right to object at the hearing of this cause to the reading of the answers to the third interrogatory; if the matters thereby attempted to be proved exist, they can be proved by higher evidence.

THOMAS DOUGLASS,
United States Attorney.

The depositions of witnesses to these interrogatories will be found in the schedule annexed.

COLIN MITCHEL,
VINCENTE GRAY,
Commissioners.

The return of the Commissioners commence with the original grant in the Spanish language, and a certificate of Don Juan Nepomuceno de Arrocha, also in the Spanish language; which certificate of Arrocha is translated by the said Commissioners, and that translation examined and approved of by the translator and interpreter of this court, as follows, to wit:

Translation of the foregoing certificate of Don Juan Nepom. de Arrocha.

I, Don Juan Nepomuceno de Arrocha, Honorary Comptroller of the Army, Collector General of the Land Revenue, and Secretary in commission of this Intendancy, &c. for the Islands of Cuba and Puerto Rico, and also of the Superior Directive Body of the Exchequer, &c.

Do certify, with reference to the attestation given by me in virtue of the decree of his Excellency the Conde de Villanueva, Superintendent General, which followed the prayer of Colin Mitchel, Vincent Gray, and Robert Morrison, merchants, on the 27th May last, the contents of which I confirm in all its parts; that I besides ratify the foregoing document to be the original to which I have referred in that certificate, and

the true title of possession issued, on the day therein mentioned, by this Superintendency, in favor of Fernando de la Maza Arredondo and Son, of a tract of land in East Florida, in the territory known as Alachua; and that the signatures at the foot are really and effectively in the handwriting, the first of the deceased Don Alexandro Ramirez, who then was Intendant of the Army, and Superintendent General Subdelegate of the Royal Exchequer of this Island of Cuba and the two Floridas, and the second of the deceased Don Pedro Carambot, who also held the office of Secretary of the said Intendancy, both of which signatures are to me well known.

I certify, in like manner, that it is usual and customary in this Intendancy, in cases like the present, to deliver the original titles to the parties interested, whenever these demand them, their copies remaining with the processes and antecedents of their origin, registered in this office. Havana, fourth of September, eighteen hundred and twenty-nine.

JUAN NEPOM. DE ARROCHA.

The preceding translation is approved. St. Augustine, 9th Nov. 1829.

A. GAY,

Translator and Interpreter of Sup. Ct.

The undersigned do hereby certify, that, in the discharge of their duty, they applied to the Secretary of the Intendancy for his deposition upon each of the interrogatories of the within commission, when he positively refused to grant it, alleging that it was derogatory to his dignity, and not (in his rank) customary in Spanish forms. But he tendered the certificate which is found in continuation of the original document annexed, and of which the foregoing is a faithful translation, made by the undersigned Commissioners, which he declared at the time of signing to be true; and being this day

again questioned, he repeated that the contents were true in all their parts. Havana, 5th September, 1829.

COLIN MITCHEL,
VINCENT GRAY,
Commissioners.

Depositions of witnesses, taken and examined in a certain cause wherein Fernando de la Maza Arredondo and others are plaintiffs, and the United States of America are defendants, in virtue of a commission issued by the Judge of the Superior Court for the Eastern District of Florida, and dated 24th July, directed to the undersigned, with other Commissioners.

Examination of Don Francisco Gutierrez de Arroyo, a witness in this cause, aged 66 years, taken at his lodgings in the suburbs of Havana, this 5th day of September, 1829.

To the first interrogatory, this deponent saith, that the document now presented to him, and which is annexed, he recognises as the original title, drawn out in his, the deponent's, clerk's handwriting, of a grant of land in favor of Fernando de la Maza Arredondo and Son, by the deceased Intendant, Don Alexandro Ramirez.

To the second interrogatory, this deponent saith, that he is perfectly acquainted with the handwriting of said Don Alexander Ramirez, and he knows positively that the signature at foot of said original is his.

To the third interrogatory, this deponent answers in the affirmative in all its parts.

To the fourth interrogatory, this deponent answers, that he has no other matter to communicate, unless directly interrogated: and being interrogated, whether it is usual and customary to deliver the original titles of lands into the hands of the grantees, this deponent saith, that with him it has been usual

and customary to deliver to the parties interested all such documents, as without them their rights might be called in question. For this reason, he, this deponent, himself, delivered to Arredondo the document above mentioned, after a copy had been taken and registered, together with the expediente or antecedents of the case, whereby the grant was obtained.

Cross-Interrogatories.

To the first cross-interrogatory, this deponent saith, that he first saw the document alluded to in December, one thousand eight hundred and seventeen, when he, this deponent, himself extended the same, and in the handwriting of his clerk was fairly copied, being at that time charged with the despatch in the Intendancy of all matters appertaining to both Floridas, and afterwards delivered it to Arredondo, from which period he has not again seen it until now, when it is presented to him, and which he recognises as the one alluded to: and he further saith, that, in the archives of the Secretary of the Intendancy only, and in no other office, are the records of such documents kept. There the title aforesaid was duly registered, and literally copied and signed by the then Secretary, the Commissary of war, Don Pedro Carambo.

To the second cross-interrogatory, the deponent saith, that the cause of his being so well acquainted with the handwriting of Don Alexandro Ramirez is his being employed near his person for nearly four years, during which, and in the days of business, he witnessed his signing almost daily.

To the third cross-interrogatory, this deponent refers to his reply immediately preceding: and he further saith, that he, this deponent, arrived in Havana in August of the year one thousand eight hundred and seventeen, when, by superior order, he brought with him the archives of the Intendancy of

Pensacola, which were under his charge as Secretary of that department: that on his arrival he become attached to the Secretary's office of the Intendancy here, and his department was the despatch of all the matters appertaining to the two Floridas; and in this he remained until May in the year one thousand eight hundred and twenty-one, when he removed to the port of Fernandina de Jagua, as collector of the customs. In that situation he continued until lately, when he received a pension on account of his long services, and is now retired from office. From these circumstances, and from having frequently seen the despatches from court, he knows the powers and faculties possessed by Don Alexandro Ramirez.

To the fourth cross-interrogatory, this deponent adds nothing.

Here follows some writing in Spanish, signed by the said Arroyo, a translation of which, made by the said Commissioners, is as follows, to wit:

TRANSLATION.

In the good faith of the literal translation, made to me by Colin Mitchel and Vincent Gray, of the foregoing declaration in the English language, I sign it, in the suburbs of San Lazaro, jurisdiction of Havana, 5th Sept. 1829.

FRANCISCO GUTIERREZ DE ARROYO.

Taken by, and solemnly sworn to before us, this 5th day of September, 1829.

COLIN MITCHEL,
VINCENT GRAY,
Commissioners.

Deposition of Don Winceslao de Villa Urrutea, a witness in the cause, aged thirty-eight years, taken at his house in the street of Amargura, the 5th day of September, 1829.

To the first interrogatory, this deponent saith, that he views the document exhibited, and which is annexed.

To the second interrogatory, this deponent answers in the affimative.

To the third interrogatory, this deponent answers likewise in the affirmative.

To the fourth interrogatory, this deponent answers, that he was acquainted, at the time, with the transaction of the cession of the Alachua lands in favor of F. M Arredondo and Son, and that it was in all good faith. And being further interrogated, he saith that it was usual and customary to deliver the original titles of lands to the parties interested, faithful and authentic copies of the same being taken and registered in the Intendancy.

Cross-Interrogatories.

To the first cross-interrogatory, this deponent saith, that this particular document he cannot expressly say that he has before seen, although the transaction is familiar to him; and he does not know, but presumes it must have been delivered, and have remained in the hands of Arredondo and Son, the parties interested. He knows that in the office of the Secretary of the Intendancy is the register kept of such documents, and none other.

To the second cross-interrogatory, this deponent saith, that, having lived with the deceased Don Alexandro Ramirez, from the age of seven years almost without intermission, having been instructed by him in parts of education, and the deceased having been married to the sister of this deponent, the opportunities were without number of witnessing the handwriting

of the deceased; add to which, that, during the period of his Intendancy, he was constantly near him, and daily saw him use his signature.

To the third cross-interrogatory, this deponent saith, that he refers to the preceding reply to the second cross-interrogatory.

To the fourth cross-interrogatory, the deponent saith he knows nothing.

WINCESLAO DE VILLA URRUTEA.

Taken by, and solemnly swore to before us, this fifth day of September, 1829—the deponent understanding perfectly the English language.

COLIN MITCHEL,
VINCENT GRAY,
Commissioners.

We whose names are hereunto subscribed, Commissioners named in the commission hereunto annexed, do certify, that, after being mutually sworn ourselves, we did duly examine the witnesses named in the commission, excepting Don Juan Nepom. de Arrocha, under oath; and the answers to the interrogatories annexed to said commission are truly and correctly herein set forth.

COLIN MITCHEL,
VINCENT GRAY,
Commissioners.

The said defendants object to the answer of Don Francisco Gutierrez de Arroyo to the third interrogatory, on the ground that if the matters therein attempted to be proved exist, they can be proved by higher evidence. The said defendants also objected to the certificate of Nepomuceno de Arrocha, annexed to said deposition.

The following documents are those which were offered in evidence by the claimants, and satisfactory proof exhibited to

the Court that they had been received in evidence by the Board of Land Commissioners for East Florida, at the hearing of this claim before said Board of Commissioners, and that all the witnesses therein named have either departed this life or reside beyond the reach of this Court's process; which said documents are in the words and figures following, to wit:

To the honorable the Commissioners of the United States for adjusting and settling titles to land in East Florida:

I, Richard Riker, Recorder of the city of New York, and a Judge of the civil and criminal courts of the city and county of New York, do hereby certify, that, on the day of the date hereof, in the City Hall, in the city of New York, personally appeared before me Nehemiah Brush, of said city, physician; Elisha Huntington, of the same place, merchant; Mordecai Myers, of the same place, auctioneer; Legrand Jarvis, of the same place, City Surveyor; Samuel R. Ayres, of the same place, physician; Warmoldus Cooper, of the same place, merchant; Thomas C. Doremus, of the same place, merchant; John West, of the same place, printer; and John M. Lowry, of the same place, merchant; and in my presence signed and subscribed their respective depositions, hereunto annexed, and made solemn oath, in due form of law, to the truth of their said depositions respectively.

And I do further certify, that several of the aforesaid deponents are personally well known to me; and all of the said deponents are, as I believe, persons of good character, and entitled to full credit.

And I do further certify, that the Honorable William P. Van Ness, the Judge of the District Court of the United States for the Southern District of New York, is now absent from the city of New York.

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[SEAL.] Given under my hand and seal, at the City Hall aforesaid, this thirtieth day of October, one thousand eight hundred and twenty-four.

R. RIKER.

City and County of New York, ss. Nehemiah Brush, of the city of New York, physician; Elisha Huntington, of same place, merchant; and Mordecai Myers, of the same place, auctioneer, the latter being Secretary of the Florida Association of New York, being duly sworn, severally depose and say: and first, the said Nehemiah Brush says, that, on or about the fifteenth day of April, in the year one thousand eight hundred and twenty-one, this deponent purchased of General Jasper Ward ten thousand acres of land, situate, and being part of the tract of land called Alachua, in East Florida, for the price or consideration of five thousand dollars; and that the said land was afterwards conveyed to the deponent, by a deed executed by Burr H. Betts, as the attorney and agent, for that purpose specially constituted, of Fernando and Jose de la Maza Arredondo, of Havana, in the Island of Cuba: and the said Elisha Huntington, for himself, says that he, on or about the fifteenth day of June, in the said year one thousand eight hundred and twenty-one, purchased of the said Jasper Ward twelve thousand acres of land, situate in the said Alachua tract, for the price or consideration of six thousand dollars; and that the said lands were afterwards, by two several conveyances, conveyed to the deponent, which conveyances were executed by the said Burr H. Betts, as the attorney and agent of the said Fernando and Jose de la Maza Arredondo aforesaid: but these deponents, the said Nehemiah Brush and Elisha Huntington, say that they have been informed, and verily believe, that, previous to the date of their respective purchases aforesaid, the said Jasper Ward had entered into a contract or

agreement with the said Fernando de la Maza Arredondo and Jose de la Maza Arredondo, for the purchase of them of an equal undivided half of the said Alachua tract, which was to be conveyed to the appointees of the said Jasper Ward, and that these deponents were the appointees of the said Jasper Ward, so far as respected the quantities conveyed to them respectively: and this deponent, the said Mordecai Myers, for himself, says that the members of the Florida Association became purchasers of thirty thousand seven hundred and twenty acres of the Alachua tract aforesaid, at the rate or price of one dollar and fifty cents per acre; and that the said last parcel of land was conveyed by the said Fernando and Jose de la Maza Arredondo to William Thorn, Alexander M. Muir, and Noah Jarvis, as trustees of the said associates, by a deed dated the eleventh day of February, in the year one thousand eight hundred and twenty-two.

And these deponents further say, that the purchases herein before mentioned were made in good faith, and under a full persuasion that the grant from the Government of Spain to the said Fernando and Jose de la Maza Arredondo was legal and valid, and that the conditions therein contained had been fully complied by the original grantees. And these deponents further say, that, in addition to the original purchase moneys aforesaid, the said Florida Association, and the said Nehemiah Brush and Elisha Huntington, had expended out of their joint fund, and for their mutual benefit, in the purchase of provisions, implements of husbandry, oxen, teams, and seeds, and other expenses incident to, and connected with, making a settlement upon the said Alachua tract, subsequent to the date of their purchases aforesaid, the sum of upwards of three thousand six hundred dollars, as appears by the accounts of the agents employed for the purpose of disbursing moneys for the

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objects aforesaid; and which accounts the deponents believe to be correct; and further they say not.

NEHEMIAH BRUSH.
M. MYERS.
ELISHA HUNTINGTON.

Sworn to at the city Hall, in the City of New York, this 30th day of October, 1824, before me,

R. RIKER,
Recorder of the City of New York.

City and County of New York, ss: Legrand Jarvis, one of the City Surveyors of the city of New York, being duly sworn, doth depose and say, that, in the month of November, in the year of our Lord one thousand eight hundred and twenty-two, Thomas Gibbons, Doctor Nehemiah Brush, and Elisha Huntington, as a committee, and on behalf of the Florida Association, caused advertisements to be published in the newspapers printed in the city of New York, for families of good character, such as mechanics and farmers, to settle upon the Alachua tract, in East Florida; and that the paper now produced, marked A, hereunto annexed, is a copy of said advertisement. This deponent further says, that, at the request of the said Elisha Huntington, one of the said committee, he, this deponent, agreed to proceed to the said Alachua tract, for the purpose of surveying lands in the said tract for the settlement and location of the settlers to be sent out by the above named parties to Alachua aforesaid. This deponent further says, that the said committee chartered, as he understood at the time, and verily believes, the schooner Bold Commander, Isaac Bogert master, to proceed from the city of New York to St. John's river, in East Florida, with settlers engaged or employed by the said committee for the purpose of settling upon the said

tract, and for the purpose of transporting provisions and implements of husbandry for the use and convenience of the said settlers: that this deponent went as a passenger from New York in the said schooner to St. John's river; and that the said schooner took out, as settlers upon the said tract, the following persons, to wit, John Smith Penny, a carpenter, Thos. Brush, junior, a shoemaker, James Edwards, a carpenter, George Downs, a blacksmith, Ezekiel Ogden, of New Jersey, a farmer, William Hawthorne, also of New Jersey, a farmer, Frederick S. Warburg, a farmer, Thomas Brush, senior, a blacksmith, and Samuel R. Ayers, of the city of New York, as physician to the establishment or settlement then intended to be formed at the Alachua; and that all the above named persons went out at the request and on the behalf of the said committee, and with the purpose and intent of becoming settlers upon the said tract on behalf of the Florida Association, and of the said Doctor Brush and Elisha Huntington. And this deponent further says, that the said schooner also took on board, at the said city of New York, a large quantity of provisions and implements of husbandry, for the use of the said above named settlers, and for the purpose of making a permanent settlement upon the said Alachua tract: that the said schooner also took out the following settlers for M. E. Levy, to wit, Mr. Bunnell, Mr. Icard, Mr. Chateneuf, and Mr. Moore, also for the purpose of settling upon the said tract. This deponent further says, that the said schooner Bold Commander, having the above named settlers, provisions, and implements of husbandry, on board, and having also on board Mr. Elias Haines, as agent of the said Florida Association, sailed from the port of New York on the twenty-first or twenty-second day of December, in the said year one thousand eight hundred and twenty-two, bound to St. John's river; and afterwards, and on or

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about the twenty-ninth day of the said month, arrived in St. John's river aforesaid: that, immediately after said arrival, the said settlers were employed in erecting a store-house at Vybrillia, for the purpose of containing the provisions and other articles taken out of the said vessels, and in erecting a house opposite for the agent, and, subsequently, in cutting and making a road from that place to the Alachua tract, for the purpose of being enabled to transport their provisions and implements of husbandry to and upon the said tract; and that, on or about the twelfth day of February, then next, the said settlers arrived at the said tract: that lots were then surveyed and marked out for the said settlers, and they immediately commenced erecting houses and planting crops upon the said tract, and in doing such other work as would be necessary for their comfort and convenience as settlers. This deponent further says, that, while passing on the road from Alachua to the store-house aforesaid, he was severely wounded and injured by a tree falling upon him, which compelled him to leave the settlement aforesaid, and induced him to return to the city of New York: that he left Florida, on his return to New York, on or about the sixteenth day of April, in the year one thousand eight hundred and twenty-three; and that his continuing ill health has prevented his return to Florida aforesaid. This deponent further saith, that, in addition to the articles herein before mentioned, the said above named committee sent out grain and seeds, for the purpose of being cultivated upon the said tract, and a number of tents; and that, after the said settlers had arrived at Vybrillia, the agent of the said association purchased three pair of oxen for the assistance of the said settlers, which were used in transporting the provisions and implements aforesaid, and in clearing and cultivating the lands allotted to the settlers. This deponent further says, that the

several articles specified and mentioned in the bill of lading now produced to him, marked B, hereunto annexed, were sent out in the said schooner Bold Commander, at the time and for the purpose aforesaid; but this deponent cannot, from the lapse of time, specify the quantities of each article, but has no doubt that the said bill of lading contains a true statement thereof. This deponent further says, that, at the time he left the Alachua as aforesaid, all the above named settlers, excepting William Hawthorne, were then upon the said tract as settlers, and occupied in the settlement and cultivation thereof.

This deponent further says, that he always understood and believes that the said Florida Association have expended a very large sum of money in making the settlement aforesaid, and in supplying the settlers with provisions and other necessaries.

LEGRAND JARVIS.

Sworn at the City Hall of the city of New York, this 30th day of October, 1824, before me,

R. RIKER,
Recorder of the City of New York.

City and County of New York, ss: Samuel R. Ayres, of the city of New York, physician, being duly sworn, doth depose and say, that, in the month of November, in the year of our Lord one thousand eight hundred and twenty-two, Thomas Gibbons, Doctor Nehemiah Brush, and Elisha Huntington, as a committee, and on the behalf of the Florida Association, caused advertisements to be published in the newspapers printed in the city of New York, for families of good character, such as mechanics and farmers, to settle upon the Alachua tract in East Florida; and the paper now produced, marked A, hereunto annexed, is a copy of the said

advertisement. This deponent further says, that, at the request of the said committee, he, this deponent, agreed to proceed to the said Alachua tract, as physician and surgeon to the settlers to be sent by the above named parties to Alachua aforesaid. This deponent further says, that the said committee chartered, as he understood at the time, and verily believes, the schooner Bold Commander, Isaac Bogert master, to proceed from the city of New York to St. John's river, in East Florida, with settlers, engaged or employed by the said committee for the purpose of settling upon the said tract, and for the purpose of transporting provisions and implements of husbandry for the use and convenience of the said settlers. That this deponent went as a passenger from New York, in the said schooner, to St. John's river, and that the said schooner took out, as settlers upon the said tract, the following persons, to wit: John Smith Penny, a carpenter, Thomas Brush, junior, a shoemaker, James Edwards, a carpenter, George Downs, a blacksmith, Ezekiel Ogden, of New Jersey, a farmer, William Hawthorne, also of New Jersey, a farmer, Frederick S. Warburg, a farmer, Thomas Brush, senior, a blacksmith, and Legrand Jarvis, as Surveyor to the establishment or settlement then intended to be founded at the Alachua: that all the above named persons went out at the request and on the behalf of the said committee, and with the purpose and intent of becoming settlers upon the said tract, on behalf of the Florida Association, and of the said Doctor Brush and Elisha Huntington. And this deponent further says, that the said schooner also took on board at the said city of New York a large quantity of provisions and implements of husbandry, for the use of the said above named settlers, and for the purpose of making a permanent settlement upon the said Alachua tract: that the said schooner also took out the following settlers

for M. E. Levy, to wit: Mr. Bunnell, Mr. Icard, Mr. Chateneuf, and Mr. Moore, also for the purpose of settling upon the said tract. This deponent further says, that the said schooner Bold Commander, having the above named settlers, provisions, and implements of husbandry on board, and having also on board Mr. Elias Haines, as agent of the said Florida Association, sailed from the port of New York on the twenty-first or twenty-second day of December, in the said year eighteen hundred and twenty-two, bound to St. John's river, and afterwards, and on or about the twenty-ninth day of said month, arrived in St. John's river aforesaid. That, immediately after their said arrival, the said settlers were employed in erecting a store-house at Vybrillia, for the purpose of containing the provisions and other articles taken out of the said vessel, and subsequently in cutting and making a road from that place to the Alachua tract, for the purpose of being enabled to transport their provisions and implements of husbandry to and upon the said tract; and that, on or about the 12th day of February, then next, the said settlers arrived at the said tract; that lots were then surveyed and marked out for the said settlers, and they immediately commenced erecting houses and planting crops upon the said tract, and in doing such other work as would be necessary for their comfort and convenience as settlers. That deponent further says, that he left the settlement aforesaid on the fifth day of May, eighteen hundred and twenty-three, in consequence of not being satisfied with his situation, and also of a report then prevailing, that the Indians were opposed to the settlement then making on the Alachua tract, and might destroy the same.

This deponent further saith, that, in addition to the articles herein before mentioned, the said above named committee sent out grain and seeds, for the purpose of being culti-

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vated upon the said tract of land, and a number of tents; and that, after the said settlers had arrived at Vybrillia, the agent of the said association purchased three pair of oxen for the assistance of the said settlers, which were used in transporting the provisions and implements aforesaid, and in clearing and cultivating the lands allotted to the settlers. This deponent further says, that the several articles specified and mentioned in the bill of lading now produced to him, marked B, hereunto annexed, were sent out in the said schooner Bold Commander, at the time and for the purposes aforesaid; but this deponent cannot, from lapse of time, specify the quantities of each article, but has no doubt but that the said bill of lading contains a true statement thereof. This deponent further says, that, at the time he left the Alachua as aforesaid, all the above named settlers, excepting William Hawthorne, were then upon the said tract as settlers, and occupied in the settlement and cutivation thereof.

This deponent further says, that he has always understood and believes that the said Florida Association have expended a very large sum of money in making the settlement aforesaid, and in supplying the settlers with provisions and other necessaries.

This deponent further says, that, subsequent to his leaving Florida, as aforesaid, Doctor Kelly, of Charleston, was sent out to Alachua, on behalf of the said association, for the purpose of attending to the medical department of the said settlement.

S. R. AYRES.

Sworn at the City Hall, in the city of New York, this 30th day of October, 1824, before me,

R. RIKER,

Recorder of the City of New York.

A.

WANTED, A NUMBER OF SETTLERS.

The Florida Association will give liberal encouragement to families of good character, such as mechanics and farmers, who may desire to settle on some of the best lands in East Florida, (viz: the Alachua tract.) None need apply but such as can bring the best testimonials of honesty, integrity, and sobriety. Applications to be made in writing to T. Gibbons, 15 Staunton-street, Dr. Brush, 73 Hudson-street, or Mr. Huntington, 91 Pine-street.

B.

Shipped in good order and well conditioned, by E. Huntington, on board the good schooner called the Bold Commander, whereof I. Bogert is master for the present voyage, now lying in the port of New York, and bound for Picolata and Vabrillia, to say, one tierce rice, one barrel sugar, ten barrels bread, eight barrels pork, eight barrels beef, one bag coffee, twenty-five bags corn, one sack salt, two kegs nails, thirty bushels potatoes in bulk, two wagons, forty boards, one ox-cart, two bundles spades and shovels, two boxes sundries, one barrel spirits, one barrel tar, two ploughs, forty (not intelligible,) one boat, oak plank, one tent, one bolt duck, oakum; being marked and numbered as in the margin, and are to be delivered in like good order and well conditioned at the aforesaid port of Picolata or Vabrillia, (the danger of the seas only excepted,) unto Mr. Elisha Woodruff, or to his assigns, he or they paying freight for the said goods, agreeably to the stipulation of charter party.

Comp'y.

In witness whereof, the master or purser of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the other to stand

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void. Dated in New York, the 18th day of December, 1822. All goods on deck at the risk of the owners.

ISAAC BOGART.

Agreement of John M. Lowry and Co., acting as agents, and Isaac Bogart, of the first part, with Elisha Huntington, agent of the East Florida Company, of the second part, for the charter of the schooner Bold Commander, said Bogart master, for a voyage to be performed, with cargo and passengers, from New York to St. John's river, East Florida, to wit, to the places on said river called Picolata and Vabrillia, or either of them, on the following terms:

The party of the first part engage that the vessel is and shall be kept in fit condition, and well manned, to perform said voyage, and agree to furnish wood and water for all the passengers which may be put on board; and, on being loaded, will embrace the first opportunity to proceed on the voyage, and deliver the cargo agreeably to the bills of lading, signed by the master, (the dangers of the seas always excepted.)

The second party may put on board a full cargo of merchandise, and make such accommodations for passengers as may seem fit; the master, however, reserving one birth in the cabin, and sufficient room in the steerage and below deck for the accommodation of his crew, and storage of half of the provisions and water and one cable, and the residue on deck; and the said second party are to deliver and receive alongside, and within reach of said vessel's tackles, the cargo at the ports of loading and discharging, the vessel being moored as is usual at the respective places, and to loan the long boat for the purpose of discharging, if necessary and required.

The second agrees to pay to the party of the first part, for the charter aforesaid, three hundred and seventy-five dollars,

of which about one hundred dollars may be paid at the port of delivery, and the balance to be paid in New York, by a draft at sight, which is to be given immediately on discharge of the cargo, on Thomas Gibbons, Esq., treasurer of said East Florida Company, which is to be immediately paid on being presented.

The second party are allowed till the eighteenth of this present month to load said vessel in New York, and twelve working lay days to discharge in St. John's river; and if detained longer at either place by the fault or neglect, agree to pay to the first party demurrage at and after the rate of ten per day daily, as the same shall grow due.

And the parties hereunto bind themselves each to the other for the performance of their respective parts to this agreement, that is to say, the vessel, tackle, and apparel, on the first part, and the cargo to be laden on board on the second part, in the penal sum of seven hundred and fifty dollars, lawful money of the United States.

In witness whereof, the parties hereunto have interchangeably set their hands and seals, this seventeenth day of December, in the year of our Lord one thousand eight hundred and twenty-two, and of the Independence of the United States the forty-seventh year.

ELISHA HUNTINGTON, [L. S.]
Agent for Florida Company.
J. M. LOWRY & CO. [L. S.]
For J. M. Lowry.
ISAAC BOGART. [L. S.]

Signed, sealed, and delivered, in the presence of us.
JOSIAH STOUT.

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City and County of New York, ss. Warmoldus Cooper, of the city of New York, merchant, being duly sworn, doth depose and say, that he was present, and did see George Downs, Elisha Huntington, Nehemiah Brush, Thomas Gibbons, and Thomas Brush, junior, sign the contracts hereunto annexed, and that this deponent became the subscribing witness to each of the said contracts; and this deponent further says, that the said contracts were signed at or about the day when they respectively bear date, and further saith not. W. COOPER.

Sworn at the City Hall, in the city of New York, this 30th day of October, 1824, before me,

R. RIKER,

Recorder of the City of New York.

MEMORANDUM OF AGREEMENT, made the 20th day of December, 1822, between Thomas Gibbons, Elisha Huntington, and Nehemiah Brush, all of the city and State of New York, a committee of the Florida Association in the city of New York, of the first part, and George Downs, of the State of New York, of the second part.

First. The parties of the first part, on behalf of the said Florida Association, hereby engage the party of the second part to proceed to the Alachua tract in East Florida, there to settle upon the said tract; and they agree to provide for him a passage, and other necessaries, to enable him to arrive upon the said tract.

Second. The party of the second part engages to proceed without delay to the Alachua tract aforesaid, by such conveyance as shall be provided by the said parties of the first part, and shall and will, immediately after his arrival upon the said tract, perform ninety days' work, of such kind and description as may then and there be required of him by the agent or agents of the said Florida Association, without charge to said

association, except that the said association are to find and provide provisions and implements of labor. He further agrees to become a settler upon the said tract, and on such part thereof as may be designated by the said agent or agents, and to continue such settler for one whole year from and after his arrival upon the said tract.

Third. The parties of the first part, as such committee of the Florida Association, engage to find the said party of the second part with provisions during the said year, or so much thereof as he may remain a settler upon the said tract; and, at the expiration of the said year, if the said party of the second part shall perform this agreement on his part, to give him a deed for fifty acres of the said tract, and, if a mechanic, one town lot in addition thereto; the said deed to be given without other consideration than the faithful performance by the said party of the second part of the condition herein before contained.

Fourth. It is understood that the parties of the first part are not to guaranty their title to the land to be given to the said party of the second part; and that, if the Government of the United States, or their authorized agents, will not permit the settlement now contemplated, that the agreement shall be null and void, as respects all the parties thereto; and in which last event, the said parties of the first part agree to find and provide a passage for the said party of the second part back to the city of New York.

In witness whereof, the parties have hereunto subscribed their names, the day and year first above written.

GEORGE DOWNS.
ELISHA HUNTINGTON,
NEHEMIAH BRUSH,
THOMAS GIBBONS,

W. COOPER. *Committee.*

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MEMORANDUM OF AGREEMENT, made the twentieth day of December, 1822, between Thomas Gibbons, Elisha Huntington, and Nehemiah Brush, all of the city and State of New York, a committee of the Florida Association of the city of New York, of the first part, and Thomas Brush, jun., of the city of New York, of the second part.

First. The parties of the first part, on behalf of the said Florida Association, hereby engage the party of the second part to proceed to the Alachua tract in East Florida, there to settle upon the said tract; and they agree to provide for him a passage, and other necessaries, to enable him to arrive upon the said tract.

Second. The party of the second part engages to proceed without delay to the Alachua tract aforesaid, by such conveyance as shall be provided by the said parties of the first part, and shall and will, immediately after his arrival upon the said tract, perform ninety days' work, of such kind and description as may then and there be required of him by the agent or agents of the said Florida Association, without charge to the said association, except that the said association are to find and provide provisions and implements of labor. He further agrees to become a settler upon the said tract, and of such part thereof as may be designated by the said agent or agents, and to continue such settler for one whole year from and after his arrival upon the tract.

Third. The parties of the first part, as such committee of the said Florida Association, engage to find the said party of the second part with provisions during the said year, or so much thereof as he may remain a settler upon the said tract; and, at the expiration of the said year, if the said party of the second part shall perform this agreement on his part, to give him a deed for fifty acres of the said tract, and, if a mechanic,

one town lot in addition thereto; the said deed to be given without other consideration than the faithful performance by the said party of the second part of the condition herein before contained.

Fourth. It is understood that the parties of the first part are not to guaranty their title to the land to be given to the said party of the second part; and that, if the Government of the United States, or their authorized agents, will not permit the settlement now contemplated, that the agreement shall be null and void, as respects all the parties thereto; and in which last event, the said parties of the first part agree to find and provide a passage for the said party of the second part back to the city of New York.

In witness whereof, the parties have hereunto subscribed their names, the day and year first above written.

THOMAS BRUSH, Jun.
ELISHA HUNTINGTON,
NATHANIEL BRUSH,
THOMAS GIBBONS.
Committee.

W. Cooper.

City and County of New York, ss. Thomas C. Doremus, of the city of New York, merchant, being duly sworn, doth depose and say, that he was well acquainted with Elias Haines, late of Elizabethtown, in the State of New Jersey, gentleman, deceased, and also with his handwriting and signature, from having seen him write; that the said Elias Haines departed this life at Elizabethtown aforesaid, about three weeks since. This deponent further says, that the name, "Elias Haines," subscribed as a witness to the several contracts hereunto annexed, is the proper signature, and in the proper hand-

writing, of the said Elias Haines, deceased; and further this deponent saith not.

THOMAS C. DOREMUS.

Sworn at the City Hall, in the city of New York, this 30th day of October, 1824, before me,

R. RIKER,

Recorder of the City of New York.

MEMORANDUM OF AGREEMENT, made the nineteenth day of December, 1822, between Thomas Gibbons, Elisha Huntington, and Nehemiah Brush, all of the city and State of New York, a committee of the Florida Association of the city of New York, of the first part, and John Smith Penny, carpenter, of the State of New Jersey, of the second part.

First. The parties of the first part, on behalf of the said Florida Association, hereby engage the party of the second part to proceed to the Alachua tract in East Florida, there to settle upon the said tract; and they agree to provide for him a passage, and other necessaries, to enable him to arrive upon the said tract.

Second. The party of the second part engages to proceed without delay to the Alachua tract aforesaid, by such conveyance as shall be provided by the said parties of the first part, and shall and will, immediately after his arrival upon the said tract, perform ninety days' work, of such kind and description as may then and there be required of him by the agent or agents of the said Florida Association, without charge to the said association, except that the said association are to find and provide provisions and implements of labor. He further agrees to become a settler upon the said tract, and on such part thereof as may be designated by the said agent or agents, and to continue such settler for one whole year from and after his arrival upon the said tract.

Third. The parties of the first part, as such committee of the said Florida Association, engage to find the said party of the second part with provisions during the said year, or so much thereof as he may remain a settler upon the said tract; and at the expiration of the said year, if the said party of the second part shall perform this agreement on his part, to give him a deed for fifty acres of the said tract, and, if a mechanic, one town lot in addition thereto; the said deed to be given without other consideration than the faithful performance by the said party of the second part of the condition herein before contained.

Fourth. It is understood that the parties of the first part are not to guaranty their title to the land to be given to the said party of the second part; and that, if the Government of the United States, or their authorized agents, will not permit the settlement now contemplated, that the agreement shall be null and void, as respects all the parties thereto; and in which last event, the said parties of the first part agree to find and provide a passage for the said party of the second part back to the city of New York.

In witness whereof, the parties have hereunto subscribed their names, the day and year first above written.

JOHN SMITH PENNY.
ELISHA HUNTINGTON,
THOMAS GIBBONS,
NEHEMIAH BRUSH.
Committee.

ELIAS HAINES.

MEMORANDUM OF AGREEMENT, made the twentieth day of December, 1822, between Thomas Gibbons, Elisha Huntington, and Nehemiah Brush, all of the city and State of New

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York, of the first part, and James Edwards, of the State of New York, of the second part.

First. The parties of the first part, on behalf of the said Florida Association, hereby engage the party of the second part to proceed to the Alachua tract in East Florida, there to settle upon the said tract; and they agree to provide for him a passage, and other necessaries, to enable him to arrive upon the said tract.

Second. The party of the second part engages to proceed without delay to the Alachua tract aforesaid, by such conveyance as shall be provided by the said parties of the first part, and shall and will, immediately after his arrival upon the said tract, perform ninety days' work, of such kind and description as may then and there be required of him by the agent or agents of the said Florida Association, without charge to the said association, except that the said association are to find and provide provisions and implements of labor. He further agrees to become a settler upon the said tract, and on such part thereof as may be designated by the said agent or agents, and to continue such settler for one whole year from and after his arrival upon the said tract.

Third. The parties of the first part, as such committee of the said Florida Association, engage to find the said party of the second part with provisions during the said year, or so much thereof as he may remain a settler upon the said tract; and, at the expiration of the said year, if the said party of the second part shall perform this agreement on his part, to give him a deed for fifty acres of the said tract, and, if a mechanic, one town lot in addition thereto; the said deed to be given without other consideration than the faithful perform-

ance by the said party of the second part of the condition herein before contained.

Fourth. It is understood that the parties of the first part are not to guaranty their title to the land to be given to the said party of the second part; and that, if the Government of the United States, or their authorized agents, will not permit the settlement now contemplated, that the agreement shall be null and void, as respects all the parties thereto; and, in which last event, the said parties of the first part agree to find and provide a passage for the said party of the second part back to the city of New York.

In witness whereof, the parties have hereunto subscribed their names, the day and year first above written.

NEHEMIAH BRUSH,
THOMAS GIBBONS,
ELISHA HUNTINGTON,
Committee.

ELIAS HAINES. JAMES EDWARDS.

MEMORANDUM OF AGREEMENT, made the nineteeth day of December, 1822, between Thomas Gibbons, Elisha Huntington, and Nehemiah Brush, all of the city and State of New York, a committee of the Florida Association in the city of New York, of the first part, and Ezekiel Ogden, of the State of New Jersey, of the second part.

First. The parties of the first part, on behalf of the said Florida Association, hereby engage the party of the second part to proceed to the Alachua tract in East Florida, there to settle upon the said tract; and they agree to provide for him a passage, and other necessaries, to enable him to arrive upon the said tract.

Second. The party of the second part engages to proceed without delay to the Alachua tract aforesaid, by such conveyance as shall be provided by the said parties of the first part, and shall and will, immediately after his arrival upon the said tract, perform ninety day's work, of such kind and description as may then and there be required of him by the agent or agents of the said Florida association, without charge to the said association, except that the said association are to find and provide provisions and implements of labor. He further agrees to become a settler upon the said tract, and on such part thereof as may be designated by the said agent or agents, and to continue such settler for one whole year from and after his arrival upon the said tract.

Third. The parties of the first part, as such committee of the said Florida Association, engage to find the said party of the second part with provisions during the said year, or so much thereof as he may remain a settler upon the said tract; and, at the expiration of the said year, if the said party of the second part shall perform this agreement on his part, to give him a deed for fifty acres of the said tract, and, if a mechanic, one town lot in addition thereto; the said deed to be given without other consideration than the faithful performance by the said party of the second part of the condition herein before contained.

Fourth. It is understood that the parties of the first part are not to guaranty their title to the land to be given to the said party of the second part; and that, if the Government of the United States, or their authorized agents, will not permit the settlement now contemplated, that the agreement shall be null and void, as respects all the parties thereto; and in which last event, the said parties of the first part agree to find and provide a passage for the said party of the second part back to the city of New York.

In witness whereof, the parties have hereunto subscribed their names, the day and year first above written.

NEHEMIAH BRUSH,
THOMAS GIBBONS,
ELISHA HUNTINGTON,
Committee.

ELIAS HAINES. EZEKIEL OGDEN.

MEMORANDUM OF AGREEMENT, made the nineteenth day of December, 1822, between Thomas Gibbons, Elisha Huntington, and Nehemiah Brush, all of the city and State of New York, a committee of the Florida Association in the city of New York, of the first part, and William Hawthorn, of the State of New Jersey, of the second part.

First. The parties of the first part, on behalf of the said Florida Association, hereby engage the party of the second part to proceed to the Alachuatract in East Florida, there to settle upon the said tract; and they agree to provide for him a passage, and other necessaries, to enable him to arrive upon the said tract.

Second. The party of the second part engages to proceed without delay to the Alachua tract aforesaid, by such conveyance as shall be provided by the said parties of the first part, and shall and will, immediately after his arrival upon the said tract, perform ninety days' work, of such kind and description as may then and there be required of him by the agent or agents of the said Florida Association, without charge to the said association, except that the said association are to find and provide provisions and implements of labor. He further agrees to become a settler upon the said tract, and on such part thereof as may be designated by the said agent or

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agents, and to continue such settler for one whole year from and after his arrival upon the said tract.

Third. The parties of the first part, as such committee of the said Florida Association, engage to find the said party of the second part with provisions during the said year, or so much thereof as he may remain a settler upon the said tract; and, at the expiration of the said year, if the said party of the second part shall perform this agreement on his part, to give him a deed for fifty acres of the said tract, and, if a mechanic, one town lot in addition thereto; the said deed to be given without other consideration than the faithful performance by the said party of the second part of the condition herein before contained.

Fourth. It is understood that the parties of the first part are not to guaranty their title to the land to be given to the said party of the second part; and that, if the Government of the United States, or their authorized agents, will not permit the settlement now contemplated, that the agreement shall be null and void, as respects all the parties thereto; and in which last event, the said parties of the first part agree to find and provide a passage for the said party of the second part back to the city of New York.

In witness whereof, the parties have hereunto subscribed their names, the day and year first above written.

WILLIAM HAWTHORN.
ELISHA HUNTINGTON,
THOMAS GIBBONS,
NEHEMIAH BRUSH,

ELIAS HAINES. *Committee.*

MEMORANDUM OF AGREEMENT, made the nineteenth day of December, 1822, between Thomas Gibbons, Elisha Hunting-

ton, and Nehemiah Brush, all of the city and State of New York, a committee of the Florida Association in the city of New York, of the first part, and Frederick S. Warburg of the second part.

First. The parties of the first part, on behalf of the said Florida Association, hereby engage the party ot the second part to proceed to the Alachua tract in East Florida, there to settle upon the said tract; and they agree to provide for him a passage, and other necessaries, to enable him to arrive upon the said tract.

Second. The party of the second part engages to proceed without delay to the Alachua tract aforesaid, by such conveyance as shall be provided by the said parties of the first part, and shall and will, immediately after his arrival upon the said tract, perform ninety day's work, of such kind and description as may then and there be required of him by the agent or agents of the said Florida Association, without charge to the said association, except that the said association are to find and provide provisions and implements of labor. He further agrees to become a settler upon the said tract, and on such part thereof as may be designated by the said agent or agents, and to continue such settler for one whole year from and after his arrival upon the said tract.

Third. The parties of the first part, as such committee of the said Florida Association, engage to find the said party of the second part with provisions during the said year, or so much thereof as he may remain a settler upon the said tract; and, at the expiration of the said year, if the said party of the second part shall perform this agreement on his part, to give him a deed for fifty acres of the said tract, and, if a mechanic, one town lot in addition thereto; the said deed to be given without other consideration than the faithful performance by

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the said party of the second part of the condition herein before contained.

Fourth. It is understood that the parties of the first part are not to guaranty their title to the land to be given to the said party of the second part; and that, if the Government of the United States, or their authorized agents, will not permit the settlement now contemplated, that the agreement shall be null and void, as respects all the parties thereto; and in which last event, the said parties of the first part agree to find and provide a passage for the said party of the second part back to the city of New York.

In witness whereof, the parties have hereunto subscribed their names, the day and year first above.

F. S. WARBURG.

ELIAS HAINES.

City and County of New York, ss. John West, one of the proprietors of the New York Gazette and General Advertiser, being duly sworn, doth depose and say, that an advertisement of which the annexed is a copy, was published in the newspaper, printed in the city of New York, called the New York Gazette and General Advertiser, on the twenty-eighth day of October, in the year one thousand eight hundred and twenty-three, and on two successive days thereafter: that the said paper is one of the daily papers, and has a very extensive circulation.

JOHN WEST.

Sworn at the City Hall, in the city of New York, this 30th day of October, 1824, before me,

R. RIKER,

Recorder of the City of New York.

FLORIDA ASSOCIATION,

New York, October 23, 1828.

At a meeting of the association, the following resolution passed:

Resolved, That the standing committee make arrangements to send out one hundred additional settlers on their purchase in the Alachua tract, East Florida.

In conformity with the above resolution, written applications will be received by either of the undersigned from such farmers and mechanics as are desirous of embracing this opportunity of becoming settlers in that desirable country, which is not surpassed for healthiness and fertility by any section of country in the United States. The tract is about seventy miles from St. Augustine, and the same distance from St. Mary's. The soil is rich, and easily cultivated. The patronage of the association will only be extended to such as produce, with their applications, satisfactory recommendations for morality and industry, it being the intention of the association to do all in their power towards establishing a good moral and industrious population on the land.

THOMAS GIBBONS.
NEHEMIAH BRUSH.
E. HUNTINGTON.

City and County of New York, ss. John M. Lowry, of the city of New York, merchant, being duly sworn, doth depose and say, that the charter party hereto annexed is an original instrument, and that the name "J. M. Lowry & Co. by J. M. Lowry," thereto subscribed, is in the proper handwriting of the deponent, and was subscribed by him at or about the day of the date of the said charter party; that the signatures Elisha Huntington, agent

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for Florida Company, and Isaac Bogart, thereto also subscribed, are original signatures of said persons respectively, and were subscribed at or about the same time; that the vessel therein mentioned sailed under, and pursuant to, said charter party. This deponent further says, that the name "Isaac Bogart," subscribed to the annexed bill of lading, is, as the deponent verily believes, in the proper handwriting of Isaac Bogart, who was then the master of the schooner Bold Commander, and who has since departed this life, as this deponent is informed and believes to be true.

J. M. LOWRY.

Sworn at the City Hall in the city of New York, this 30th day of October, 1824, before me,

R. RIKER,
Recorder of the City of New York.

FERNANDO M. ARREDONDO AND OTHERS
vs.
THE UNITED STATES OF AMERICA. } *Land claim.*

Testimony of witnesses of the claimants, taken and received in this case in open court.

NOVEMBER 17, 1829.

Joseph M. Hernandez, sworn as a witness in open court on the part of the claimants, states: Subsequently to the year 1812, the Seminole Indians abandoned that country, then known as the Alachua, as nearly as I recollect, but cannot be certain as to the particular time, but think it was some time in the year 1813 or 14. The witness further states, that these Indians have not, within his knowledge, since that time returned to the Alachua country, as he has never understood that they have so returned; and that it has been the general understanding of the community that they have not so returned, that is,

to make that country their residence or place of abode, as it formerly was.

Examined by United States' Attorneys.—States: I never was in the Alachua district before 1813 or '14, the time mentioned above, or indeed before the change of government in 1821. The witness further states, that he has understood and supposed that Alachua was a district of the country, the extent of which was not particularly known to him: he is not able to say that the name of that district was derived from a lake called Alachua. Witness states, that, subsequently to 1812, several armed parties, at several times, as he has understood, made incursions into the Alachua country against the Indians; and that he also understood that the Indians abandoned the Alachua country on account of these incursions. The witness says that he cannot say that they were driven from the country on account of these incursions and actual force, but is inclined to think that they left it for the purpose of obtaining a position more protected than the one so close on the frontier. The witness states, that, after the disturbances in 1812, a period of quiet, immediately on the removal of the United States' troops from the province, took place, and continued for a number of months; but again, in the course of the year 1813, straggling parties, without any particular head, as the witness understands, were disturbing the country in the interior west of the river St. John's, and about the Alachua. This state of things continued for some time, and when it ceased witness cannot precisely state; but previous to the occupation of the town of Fernandina, about the close of the year 1817, as witness thinks, a period of quiet of ten or twelve months had happened, which was again disturbed in the neighborhood of Amelia island by that occupation, but the country generally continued quiet till it was entered by the United States in

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1818. The witness further states, that the Indians, when they left the Alachua, as above stated, have been understood by him to have gone in a southwardly direction, to a place which he believes is called Pa-lak-li-ka-ha: as to the precise distance, he cannot state, and does not recollect that he has ever heard, but understood it was a considerable distance. The witness again states, that he has never understood that any Indians were residing at Alachua about the time of the transfer of this country to the United States, or any time just previous thereto, or since the abandonment of the Alachua, already spoken of by the witness. The witness states, in a reply to an inquiry by the court, that the straggling parties which he has spoken of in his testimony, as he understands, were altogether unauthorized, and not acting by order of any Government: he also states, that the Indians, while they resided at Alachua, before their abandonment of it in 1813 or '14, were in possession of villages and cultivated grounds, and cattle and horses; and he means to state, in his testimony, that he has understood that they have never returned to the re-occupation of these villages, or the cultivation of these grounds, it being considered, as witness understands, an unsafe place for the grazing of their cattle and horses.

Witness states, in answer to an inquiry by counsel of the United States, that he has understood that many houses were destroyed, belonging to the Indians, by the parties that invaded the country from time to time.

Witness examined by claimants.

States, that this is his native place; that it has been his constant residence since 1811; that here he has had the same opportunity to know the usages and practice of the Government of Spain, in regard to East Florida, as have been possessed by other residents here; that he resided in the city of Havana

about five years, immediately preceding 1811, which has given him some opportunity to know of the usages and mode of administering the government there.

Question by counsel for claimants.—Have you ever known a grant of a Governor or Intendant disapproved by the King?

The witness replies, that he never has known such grant disapproved of.

Question by counsel for claimants.—Was it not understood as the practice and usage of the Government of Spain, to dismiss or censure an officer who exceeded his authority, but not to vacate the grant given?

The witness replies, that it has always been understood here, that he believes it is so understood by the inhabitants of Cuba, and probably throughout the Spanish dominions, that the acts of the Governor, in cases where the interests of the crown are alone affected, are guarantied to the subject, and the Governors alone are answerable to the King, if they have exceeded their authority; and that the interest derived by the subject by virtue of such act is not vacated, taken from him, or permitted to suffer.

Question by counsel for claimants.—When a title in form, or *titulo de propriedad*, as it is called, was given, was it not considered by the grantees as absolute and indefeasible, and was it not so respected by the Spanish authorities?

Witness replies, It was.

Question by counsel for claimants.—When a title in form was given to a Spanish subject, and a condition annexed, was it not understood to be the practice and usage of the Spanish Government to call upon the grantee, by inquest or other proceeding, to fulfil the condition? and, if any cause was shown, would not the Government allow a further time for its performance?

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Witness replies, that it was not the practice, as he understands, for the Government to call on the grantee to show cause why he had not performed the conditions of his grant, and that a grant, by reason of the non-performance of the conditions attached to it within the time stipulated, would of course become void; but it was understood generally that further time would be given for the performance of the condition upon the grantee showing good and reasonable excuse for the non-performance of those conditions within the time limited.

The counsel for the United States excepted to the three preceding questions, as being incompetent and irrelevant; which objection was overruled by the court.

Question by counsel for claimants.—Was the Spanish Government able to afford protection to settlers in the years 1818, '19, and '20, in the Alachua?

Witness replies, I do not think they were.

Question by counsel for claimants.—Did not this inability arise from the recent circumstances of the Spanish nation.

Witness replies, Yes, and war with France, since the year 1808, up to 1820, from which resulted the inability of Spain to protect her colonies. The witness adds, that the inability of the Spanish Government has continued and increased up to the present time.

Examined by counsel for the United States.

The witness states, that Fernando M. Arredondo and Son, the original grantees of the Alachua tract, are Spanish subjects, and Spaniards by birth and descent. Witness further states, that he cannot say precisely when Fernando M. Arredondo, the father, left this territory. He left this country as its representative at the Provincial Junta, held at Havana, for the purpose of electing its representative to the Cortes of

Spain, and has not since returned to Florida. F. M. Arredondo, the son, left here something previously to the change of flags, but, the witness thinks, after the father left the province. The father has remained an inhabitant of Havana till this time. Witness believes Jose Arredondo, the son, has been twice in this country since the change of flags, and when he last left here was lost in the schooner Florida, in 1825, on returning to Cuba, to his residence in Cuba.

Question by counsel for claimants.--Would it not have been impossible to bring two hundred Spanish families here after the treaty with Spain?

Witness replies, that it would have been somewhat difficult, but cannot say that it would have been impossible; but Spaniards and Catholics, prefer to remain in their own, or, if they emigrate, to Spanish colonies. Witness further states, that he has not understood that the laws of Spain, or the regulations of the crown, prohibit Spanish subjects from emigrating to Protestant countries, but he has understood, from general report, that, some time between 1800 and 1805, a Spanish sloop of war was sent by the Spanish Government to Baltimore, to take from that place a number of Spanish youths at school or college there. Witness further states, that a large number of the Spanish families have left this country, and gone to Cuba, since the change of flags, and principally immediately after the exchange. I know that some of the inhabitants of Louisiana left that country after its transfer to the United States; cannot say what number.

In answer to inquiry by counsel for the United States, witness states, that, by the inhabitants of the country, he does not mean the military who belong to the garrison, but he meant those who were citizens of the place, and some of these were connected with the military, and some few others, perhaps, held civil offices.

DECEMBER 1, 1829.

Joseph M. Hernandez, sworn herein on the 17th of November, was on this day again called, and examined by the counsel for the claimants. States: That during his residence in this country, during the Spanish Government, he never heard of any boundary between the Indians and that Government. Witness states, that Governor White conducted himself, in his official capacity, more as a military man than as a civilian. Witness does not believe that he condescended to give explanations for any of his official acts, except to his superiors, to whom it is presumed he was full and explanatory. Witness states, that he believes it has been usual for the Government in Cuba to make large grants of lands, not only for Cuba, but for Florida also: in making these, witness believes, they take into consideration the grantee's condition in life, and his ability also to improve the land granted; services rendered by him are also considered. The witness states further, that the practice of holding lands in Cuba on tribute, or the payment of the lawful interest on the stipulated value of the lands, has emanated from the making of these large grants, and this practice of holding lands in Cuba is very extensive: the persons so holding the lands, take them, as witness believes, from the Government grantee, on the condition of paying to him this annual tribute, but are not bound ever to pay the principal, but may do so if they think proper.

Cross-examined by Counsel for the United States.

Witness states, that he personally knew Governor White, and had known him from his childhood till he left this place in 1802, at the age of fifteen, to go to Savannah, to school: that witness returned to this place again in about two years, left it again in 1805, and returned again in 1810, when he had an opportunity again of seeing Governor White. Witness went

again in 1810 to the United States and to Cuba; and again returning, in 1811, found that Governor White had died in his absence. Witness states that he formed his opinion of the manner of Governor White in transacting official business from his own observation, and from the general character which was borne by him. Witness states that Governor White was esteemed a very honest man, and remarkably strict and rigid in the discharge of his duties. Witness states that he is under an impression that any special rules and regulations upon which lands are to be granted by the officers of Government are published ordinarily in the Government gazette, or in some other public manner; but he believes, at the same time, that they act discretionary, reporting their acts to the crown. Witness states that he means to be understood that the Governor, or public authority, report their acts to the crown, in cases where, in their discretion, they have thought it their duty to go contrary to the laws or ordinances of the crown, for instance, the witness states that Governor Estrada exchanged 4,000 or 4,500 acres of land for a vessel, with Mr. Russel: this act, witness understands, was contrary to the ordinances, which prohibit or did not allow the sale of lands; but this act was reported by Estrada to the crown, and was approved of, but it was directed that the approval should not be considered as a precedent for future acts of like kind. Witness thinks the large grants of which he has spoken, as having been made in Cuba, were made many years ago: the grantees of these large grants are some of them in possession of large stocks of negroes. The witness states that of these large grants, to which he particularly has referred in his testimony, some of the grantees may be dead, and others alive; does not particularly know. He further states, that grants have been lately made in Cuba, but whether in large or small grants, he is not

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able to say. Witness says that, from 1816 to 1821, the time of the exchange of flags, a small number of families could not safely have settled in Alachua; that two hundred families might have maintained themselves, and would have been safe there.

All the evidence of this witness relating to the practice of the Government of Cuba is excepted to by the counsel of the United States, as inapplicable, irrelevant, and foreign to the issue.

NOVEMBER 4, 1829.

George J. F. Clarke sworn and examined as a witness, in open court, on behalf of the claimants.

Question. What was the state of the Seminole nation in the neighborhood of Alachua in the years 1818, 1819, 1820—whether disturbed or not, and, if so, the causes of disturbance?

Answer. General Jackson's army broke up Micasooky town, on the borders of Florida, in May, 1818: the army then progressed east by the town of Sawanee, lying N. W. of the centre of Alachua, about thirty miles, which they broke up. The Indians, in consequence of which, were dispersed in small parties, and were scattered in East Florida as far as Indian river, and seaboard. With these circumstances I became acquainted from report. I am unacquainted with them myself. I am not certain with regard to the distance from Alachua to the Sawanee. The Indians were dispersed in small marauding parties, and it was considered dangerous to go among them. This was the state of affairs, more or less, until the late transfer of this country to the American Government.

Question. Did the unsettled state of affairs in Spain in 1818, 1819, and 1820, cause any degree of stagnation in the business generally in this Territory?

Answer. Florida has been upon the decline from the revolution in France, and at this period was at a very low ebb, so low, indeed, that it scarcely could have been worse.

Question. Was not the Government of this Territory jeopardised or enfeebled by the unsettled state of Spain?

Answer. The Government was almost destitute, at that period, of funds and military, and unable to protect those who were at a distance from the town.

Question. Were not the enterprise and exertions of the inhabitants of this territory at that time very much cramped and paralysed in consequence of these causes?

Answer. The efforts of the inhabitants were very much enervated in consequence of this political insecurity.

Question. Whether from these causes emigration from all quarters, and particularly from Spain, was not checked?

Answer. It was, and I believe from these causes. As for emigration, we seldom had much, but from the United States, from which we generally received emigrants.

Question. Was it not more difficult to get emigrants from Europe under such a state of affairs than if no disturbance or difficulties had existed?

Answer. It was.

Cross-examination.

Question. Do you think that this state of affairs would prevent emigration from Cuba to this country, even under the protection of some wealthy or powerful personage?

Answer. I really cannot say.

Question. Were the inhabitants of this territory in the habit of travelling into the interior?

Answer. It was not customary; there was but little travelling.

Question. Why not? 502.

Answer. Because, in the first place, they had no business to call them there, and there was danger besides apprehended.

Question. Was there any apprehension of the Indians by the inhabitants?

Answer. There was.

Question. Were the inhabitants averse to making settlements upon the outskirts of the present settlements? I do not mean insulated location among the Indians.

Answer. Yes; they were averse to being on the frontier, although there were some hardy few who formed a frontier, though none wished or was willing to go beyond them.

Question. What are the Spanish inhabitants in the territory, emigrants of old Spain?

Answer. I do not know.

Question. Do you know whether they are few or many?

Answer. I do not know.

Question. Do you know whether there are twenty or one hundred, more or less, either one or the other?

Answer. I really do not know; I never made any particular inquiry.

Question. Have you ever resided in the city?

Answer. I have had occasion to be here frequently, but never for a long period at once, since the year 1808.

Question. Have you not made it your study to gain an intimate acquaintance with the population and general resources of Florida?

Answer. I have, sir, until the change of Governments.

Question. Are you not the author of any pieces appearing in the Florida Herald, signed A Native Floridian?

Answer. I am.

Question. Have you not published some pieces upon the subject of the Indians?

Answer. Some of my pieces have been published, but not by me.

Question. Have you known any emigration of Spanish subjects, not Minorcans, unconnected with Government?

Answer. Yes, from Cuba, who came upon a bounty paid by the Spanish Government, as settlers here.

Question. Did you know any of them?

Answer. I did: do not recollect the names at present; came here about the year 1800; their descendants have left this place.

Question. Do you recollect of any emigration from old Spain direct, or from Europe, of Spanish subjects.

Answer. I do not.

Question. Do you know whether it has been the subject of solicitude of the Spanish Government to increase the population of Cuba, Porto Rico, and the Floridas?

Answer. It was. I have seen a proclamation in one of the publications of the United States, which was intended to induce persons to emigrate and settle in Cuba. Did not obtain my knowledge of Porto Rico from the same source.

Question. Was the Spanish Government jealous of the emigration of the citizens of the United States?

Answer. It was, at one time. About the year 1792 the territory was open to all; afterwards, a proclamation, about 1804 or 5, prohibiting the emigration only of citizens of the United States.

Question. Was the order of prohibition enforced?

Answer. It was, until the cession, although there were occasionally exceptions.

Question. Did not the revolution in 1817, under McGregor, increase the jealousy?

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Answer. It did not.

Question. The incursion under McGregor was principally conducted by Americans, was it not?

Answer. Yes, as I understood.

Question. What was the conduct of the Spanish population at that time?

Answer. Generally in favor of the Government.

Question. Was the revolution in 1812 principally supported by the American population of this territory, aided by the American army?

Answer. It was.

Question. Do you know of any American citizens who aided McGregor in his revolution?

Answer. I recollect but one only by name, but understood there were many others.

Question. In consequence of the revolution of 1812, were not bounties of lands given by order of the King to such persons as remained faithful in their allegiance, and served the Government in some military capacity?

Answer. Yes.

NOVEMBER 19, 1829.

George J. F. Clarke, heretofore sworn herein, was on this day again called and examined by the counsel for the claimants. States, that the Indians were driven from the Alachua late in 1812, or early in 1813; that after they were driven off, as spoken of, they did not return, as he believes, to occupy or settle the country. Witness further states, that he was an officer of the Government here about five years immediately preceding the change of flags: he held his office under the appointment of the Governor of this province, and the discharge of my public duties led me to seek and obtain an intimate knowledge of the condition of that part of East Florida lying

to the north and west of the St. John's, so far as its internal peace was concerned. Witness states, that he has no certain criterion by which he is enabled to say that the grants of the Governors of lands to the subject, were, according to the usage of the Spanish Government, to be protected and confirmed to the subject, even though the conduct of the Governor in making the grant was disapproved. Witness thinks that it was the general impression that the subject, the grantee, would in such case be protected in his grant; but he knows of only one case to confirm this idea, and that was the case of a grant of lands to one Russell, in consideration of a vessel sold by him to the Spanish Government: the conduct of the Governor here was disapproved of, it being a principle of the Government here not to sell, but to give their lands; and for this reason the conduct of the Governor was disapproved of, but the grant was confirmed to the said Russell. Witness further states, that he has known of no case wherein a grant has been revoked because the Governor making it was not empowered so to do. Witness states, that his impression has been—and that impression was generally received here—that the Spanish Government has always been unfavorable to the emigration of her subjects to foreign countries, and he concludes, of course, from the nature of her religion, more unfavorable to the emigration to Protestant than to Catholic countries. The witness believes that this policy was founded chiefly on the enfeebled state of European Spain, which had been occasioned in a great measure by the drain of her population to her colonies in America. Witness states, that, from his knowledge and impression with respect to the policy of the Spanish Government, he thinks that two hundred families would not have been permitted, with the knowledge of the Government, to have emigrated from the dominions of Spain to this country

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after its transfer to the United States. Witness states, that the Spanish population of this part of the territory, that is, much the greater part of this population, left it, chiefly for Cuba, soon after the transfer of Florida, or previously thereto, in contemplation of that transfer, but there still remained a considerable number. Witness states, that he knows of no special inducements that were held out exclusively to foreign Catholics to settle in the Spanish colonies; but inducements in 1790 were offered to foreigners generally to settle in Florida: this inducement, as witness understands by the proclamation of 1790, consisted of head rights to lands. Spanish subjects from the other Spanish colonies, in addition to their head rights to lands, received pecuniary donations. Witness states, that the provincial Government of Florida had it not in their power, between the years 1818 and 1821, to protect, or afford protection to, settlers in the country west of the river St. John's; that he believes that the principal cause of the want of power in this provincial Government, was the debilitated state of the mother country. The witness states, in answer to an inquiry by the counsel for claimants, that he does not know what quantity of land was meant to be expressed by a *finega* of land; it was a measure not applied to lands here, the quantity of lands being expressed here by the term *acre;* but a *finega* of grain is understood by the witness to be 3½ bushels; and Indian corn was sent to this place from Cuba, to be distributed among the people, by the *finega* of 3½ bushels. The *finega* denotes a measure of land in Spain, but the quantity implied witness cannot state. Witness states, he believes a bushel of wheat is a large allowance for planting an acre of ground; he knows it is so considered as to rye, and judges about the same quantity of wheat as rye is necessary for seeding land: a bushel of Indian corn will plant four to six acres.

Cross-examined by United States' Attorneys.

Witness states, that he does not know whether Pa-lak-li-ka-ha, the place to which the Indians removed when they left their settlement in Alachua, is within the district heretofore known as Alachua or not: he understood that the term Alachua formerly designated only the pond called Alachua pond, but it, after a while, was applied to an indefinite tract of country around the pond, the limits or extent of which is unknown to the witness. Witness further states, that the Indians called Alachua Indians were understood to have lived in the vicinity of this lake he has spoken of, called Alachua, are the same Indians he has spoken of as having been driven from their settlements in 1812 or 1813. Witness states, that he is not able to say that these settlements of the Indians were within the limits of this grant of F. M. Arredondo and Son; they were in that district of country called Alachua. Witness states, that the inability of the provincial Government to protect settlers west of the St. John's, and above the mouth of Black creek, was as great in 1817 as it was in the years spoken of by him above; and that inability had existed ever since the revolution in this province in 1812; and the cause of this enfeebled state of the provincial Government resulted from the debilitated state of the mother country, commencing particularly with the French revolution, which was as operative, as it regarded this country, in 1812, as it was afterwards: no material assistance or supplies were received by the Government here after the revolution of 1812. Witness states, that the Alachua country lies west of the St. John's, and south of the mouth of Black creek. Witness states, that it was considered unsafe to settle in the district of country spoken of, subsequently to the revolution in 1812, up to the time of the change of flags; he states that this in-

security he considered to have been occasioned by the troubles of the revolution, and the invasion of the province by the United States, and the occupation of Fernandina, and invasion by McGregor. The Indians were considered friendly to the Spanish Government, and the danger was not so much apprehended from them, unless from plundering parties of Indians, they not being under control. McGregor took possession of Fernandina about the last of June, 1817.

In answer to inquiry by claimants counsel, witness states, that the settled part of the country north of the St. John's was quiet in 1817; but that portion of the country in the neighborhood of Alachua was still disturbed by marauding parties of plunderers and cattle-stealers from Georgia, and from our own disaffected people.

NOVEMBER 20, 1829.

George J. F. Clarke, again called and examined by the counsel for claimants, states, that the provincial Government in Cuba is understood by him to be in the practice of making quite small grants; and has understood that very large grants are made there.

Cross-examined by counsel for the United States.

States, that he has not understood that the Indians on the west of the Sawanee, after being broken up by the invasion of Florida by the American troops in 1818, crossed the Sawanee, and settled or occupied the Alachua country; but he has understood that they extended themselves south and east from the Sawanee; and some of them, he knows, located themselves on the seaboard of the Atlantic, to the southward. That those Indians which crossed the Sawanee were principally Seminole Indians. Witness considers all the Indians in Florida Seminoles, with a few exceptions; knows no exception of any town not occupied by the Seminoles, except the town of He-

cha-ta. Witness thinks F. M. Arredondo, the grantee, left East Florida in 1812 or '13, and has lived in Cuba since that time. As to Joseph M. Arredondo, one of the grantees, witness cannot tell when he left East Florida: he supposes it was after the father left it, but before the exchange of flags; but he came to this country again afterwards, and witness saw him here in 1824 or '5; and he was finally drowned in going from this to Cuba, at the time last mentioned. At this time his family resided in Cuba, and I supposed him here, in 1824 or '5, with a view to business rather than residence. At the time that Arredondo, senior, left here, in 1812 or '13, the commercial house of which he was one of the principals remained here; and witness does not know whether it was broken up at the time that Joseph M. Arredondo afterwards left here, or not; and cannot say whether it was broken up at the exchange of flags or not. The Arredondos were Spaniards. Witness understood the father came from old Spain.

Witness states, that he has heard of no inducements offered by the Arredondos to Spanish families to settle at Alachua: he thinks it would have been difficult to have obtained that number of Spanish families from any where, to have gone there before the transfer of Florida to the United States. Witness states, that, previous to 1817, his residence had been at Fernandina for a number of years, the duties of his office being confined to the part of the province north of the St. John's, after 1817, till subsequent to the exchange of flags: his residence was not of a fixed character, but he made it his home chiefly at St. Mary's, being Vice Consul of the Spanish Government for the southern part of Georgia; but his business led him frequently to St. Augustine, and he was of course backwards and forwards from St. Mary's to St. Augustine.

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In answer to question by claimants, witness states, that Fernando M. Arredondo, senior, when he left this province at the time mentioned, left it in the character of representative of East Florida to the Provincial Junta of Cuba.

DECEMBER 1, 1829.

George J. F. Clarke, again called and examined by the counsel for claimants, states, that he was Surveyor General of this province, which office he held from 1811 till the exchange of flags; had instructions for the regulation of his conduct in office, but they made no reference to any Indian boundary, separating their lands from the lands of the whites, or to any Indian boundary of any description. He never received from any Governor, or from any public officer, any direction recognising or counting upon the existence of any such boundary. Witness further states, that he never heard of any such till the exchange of flags, except, about thirty years ago, he heard an Indian trader say something of an Indian boundary established anterior to 1784, in British times, which he supposed regulated the Spanish Government: that the witness then made inquiry whether there was any such boundary of various officers of Government, and especially of Zubizaretta, the Escribano, and was always informed that there was no line of demarcation between the Spaniards and the Indians, which governed, whatever there might have been in British times. Witness says that Governor White, in his unofficial intercourse, was affable and polite; that, when on official business, he was stern and severe; seldom permitted scarcely a second question: he made his decisions without entering into explanations, at least in his office; though, to a friend, he might have given his reasons out of his office. Witness states, that, previous to 1817, the Government were certainly reluctant to make grants

west of the St. John's river; generally, from a desire not to bring the people in too close contact with the Indians; and for the same reason, the people were not inclined to ask for grants there; but the Indians having left that country in 1812 or '13, and the marauding parties from Georgia having ceased in 1817, the Government, at that time, made grants of lands to people in that country when they wished them; and witness himself, in 1817, '18, and '19, located many grants there for the grantees, which had been previously made in other places. Witness states, that in British times there was an establishment high up the river St. John's, on the west side, below the mouth of the Acklewaha, the first nearest the Acklewaha, called Pengree's Old Field: this was a grant made by the British Government to some titled person in England; was a large grant of several thousand acres, believes 10,000; and under this grant, an agent from England, by the name of Pengree, came out and settled; thence the name of the place. The opposite side of the river was called Mount Tucker, after the name of the grantee, part of the grant being on the east side of the river. Witness states, that the overseer, Pengree, as he understood, lived on the east side of the river, on this mount, it being a fine elevated situation; but the plantation was on the other side, and consisted of low cultivated rice fields. There was another settlement lower down the river, on the west side. It was a large settlement, and belonged to the house of Panton, Leslie, & Co. Witness became an apprentice of the house in 1786; visited the place about three years afterwards; found it to be an old establishment, and concluded it must have been held under a British grant, the British having occupied the country as lately as 1784. This settlement lay above Buffalo bluff, witness thinks, some 4 or 5 miles.

DECEMBER 2, 1829.

George J. F. Clarke again called, and examined by counsel for the United States. States, that he meant, in his testimony yesterday, when he spoke of the Indians having left the country, that he meant all that country west of the St. John's and south of the Santa Fe, extending westwardly to the Sawanee, and southwardly towards Tampa bay; that he means that they had generally left it, though some might have remained. When he speaks of the Alachua country, he speaks of a country of indefinite extent: the term originally applied to the pond or savannah, but has been gradually extended farther and farther, including the district of country around that pond. Witness states, that, as early as in 1817, the term Alachua comprehended a district of country extending north and south about 100 miles, and east and west about 70 miles.

Witness states, that this pond was considered not about the centre of this country, but north and west of it, as he thinks. Witness says, that, as to this part of the country mentioned yesterday by him, as having been left by the Indians, and the extent of which he has just given, the Indians did not subsequently return to settle, as he understood, after they left it in 1812, '13, and '14. Witness has claims to lands, derived from the Spanish Government, in various parts of the Alachua district. Witness states, that his impression is, though he is not able to state positively, that he has no grant to lands in Alachua, other than those made by Governor Coppinger.

NOVEMBER 4, 1829.

William H. Simmons, sworn as a witness, in open court, on behalf of the claimants, states:

Question. Will you be so good as to state generally what you know concerning the settlement at Alachua?

Answer. I think it was in February, 1822, I was there: there were then five or six or seven houses. Mr. Wanton was there, and established there, and I understand had been there upwards of a year. There were five or six negroes about the establishment. I was there again in the course of last month, (referring to Nov. 1824;) there were then additional houses; there was also an additional white family, a Mr. Brush, with whom were residing three white men, who I understood had come out as settlers. I was also at Mr. Levy's settlement, Pilgrimage, about three miles off. I do not recollect the number of persons there, but I should judge that there were thirty, about eight or nine of whom were whites; I observed five or six horses and three teams of oxen, which were employed on the settlement; I did not see the rest of the stock. There was a range of tenements, which would accommodate nearly all the persons there; besides which, I observed a corn-house, stable, and an out-house, which I believe was a negro house, besides a blacksmith's shop. There was a good crop of corn raised this year, quite sufficient, I should think, for the support of the whole establishment for a year.

Question. You have travelled upon a road from Alachua to St. John's river, which road was made by the Alachua company?

Answer. I did: the road must have been made at a considerable expense, as it extends for about fifty miles; the road being sufficiently wide for a carriage, and having on it nine bridges.

Question. From the information which you have been able to obtain, can you say what number of people there are settled at Alachua?

Answer. At the time of my last visit, (Nov. 1824,) there were, I think, fifty persons, principally white; and of these, the greater part, or nearly all, were grown persons.

Question. Did there appear to be any preparations making for any other settlement?

Answer. There were two other settlements under way, having commenced clearing and cutting for the purpose of building: there was more than one family at each settlement.

Question. The largest proportion of settlers are at Mr. Levy's, the next at Mr. Wanton's; what was your intention or motive for visiting that part of the country?

Answer. Merely from motives of curiosity, and having a desire of seeing the country.

Question. Had Mr. Wanton his family there in 1822?

Answer. He had.

Question. Were there any families besides the ones you have mentioned?

Answer. There were two negro families besides.

Question. What was Mr. Wanton's occupation?

Answer. He had the direction of the planting and other concerns, and had a store for the purpose of trading with the Indians.

Question. Were there any other persons besides the negroes there?

Answer. The proprietors were expected, and had arrived, but merely to look after their concerns. I saw Mr. Murphy there.

Question. Do you think that Mr. Wanton was in Alachua for any other purpose than that of trading with the Indians?

Answer. I understood that Mr. Wanton was there rather for the purpose of becoming a settler under the conditions of the grant.

Question. Did you understand that Mr. Murphy was there for the same purpose?

Answer. No; I understood that he was employed by the concern as corresponding clerk. He was not established there, but, by engagement, he was to meet the proprietors at that time. At my first visit, there was no other person established there but Mr. Wanton and some negroes.

In answer to inquiry by counsel for United States, witness states, that most of the families established at Alachua were Americans; among those established at Alachua were Reuben Charles and Edward M. Wanton, both of whom were Spanish subjects. Does not recollect whether there were any European Spaniards at Alachua; thinks there were not.

DECEMBER 4, 1829.

William H. Simmons again called, and examined by counsel for the claimants. States, that Long lake is about seven miles south of the bar of lake George, and three miles south of Volusia. All these places are south of the mouth of the Ocklewaha. These lakes are merely expansions of the river.

Cross-examined by counsel for the United States.

Witness states, that he supposes Edward M. Wanton has resided in this country a long time; he was a clerk in the house of Panton, Leslie, & Co., a cotemporary of Geo. J. F. Clarke: supposes he must have been born in this country, and while it was a British province. Warburg, witness supposes, was a German, and from Germany. Cheatinuef was from France.

NOVEMBER 20, 1829.

Eusebio M. Gomez sworn and examined in open court, on behalf of the claimants. States, that he is a distant relation of the Arredondo family, and that the family of F. M. Arredondo, sen., left St. Augustine for Cuba in August, 1822; that the family of Arredondo consisted of his wife, children, and servants. Witness states, that he was an officer of the

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customs in this place, under the Spanish Government; that he had opportunity to know, from his official situation, of grain being sent from Cuba to this place by the Government there. The grain was sent for the use of the troops, and the bill of lading stated it to consist of a certain number of *finegas:* this was a measure not practised here, and the Governor ordered it to be measured by the bushel; and it was found in this way that a *finega* was equal to 3½ bushels. Witness recollects two instances of grain being sent in this way. Witness states, that he is of Spanish parentage, born in Cuba. He adds, that Spaniards have a great dislike to settle in foreign countries, especially where the Roman Catholic religion does not prevail; and he believes that such is their repugnance on this score, that it would be difficult, if not impossible, to induce any considerable number of Spanish families to emigrate and settle in such a place. Witness states, that he does not think the Spanish Government would permit so large a number as two hundred families to emigrate from their dominions to a foreign country; as a reason for this opinion stated by witness, is, that the Government invites strangers to enter and settle in the Spanish dominions, and would not permit it, he thinks, to be weakened by any considerable emigration of her own subjects. Religious considerations, he thinks, would have influence on Government to prevent, especially to a Protestant country, in old Spain. Witness states, that the house of F. M. Arredondo and Son, when the principals have been absent, has had an agent here to represent them in the transaction of business; that agency had reference to their concerns generally.

Cross-examined by counsel for the United States.

Witness states, that he thinks that the house of F. M. Arredondo and Son was broken up in 1815 or '16. At the time

Jos. M. Arredondo left this place, in the latter part of 1816 or '17, he had a family, and took it with him; he resided in Cuba from that time till his death. F. M. Arredondo, sen., left the province in 1813, and has lived in Havana from that time till the present; but left his family here till 1822, as stated above. Witness states, that he knows of no efforts made to induce Spanish subjects to emigrate to a foreign country; he can refer to no particular instance. Witness has not known of F. M. Arredondo and Son holding out any inducements to Spanish subjects to settle at Alachua, either before or since the change of flags. Witness has resided in St. Augustine since 1821, except one year, which he spent in Havana. Witness states, that he saw F. M. Arredondo often in Havana, but never heard of his offering inducements to Spanish subjects to come and settle at Alachua: he never heard him say any thing on the subject of the grant; never spoke to him respecting it.

NOVEMBER 20, 1829.

John Masters sworn and examined in open court, on behalf of the claimants. States, that he has been in the habit of keeping stock in East Florida for thirty-five years. Witness thinks that it would take ten acres of land for the pasture of a cow and calf. With respect to swine and breeding sows, the witness has kept stock of that kind; but the practice in East Florida is not to keep them shut up in pastures, but to let them run at large; and it is difficult for him to say how much land would be necessary to sustain ten breeding sows, kept within an enclosed pasture; he thinks about forty acres, but it is, in a great measure, matter of doubt with him. With respect to horses, the witness thinks more land is required for the pasture of a cow than for a horse, if they depend on pasture altogether; he thinks there is little difference as to the quantity of land required.

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Cross-examined by counsel for the United States.

Witness states, that he has not known stock of any kind kept in pastures in this country; when not shut up in pens or stables, are allowed to run at large on the grazing ranges of the country; and therefore, as to the quantity of enclosed pasture necessary for the pasturing of any kind of stock, he cannot speak with confidence or certainty.

Transcript of the testimony of *Hipolita Chateanuef*, taken before the Board of Land Commissioners for East Florida, and to be taken as evidence in this case—the said Chateanuef being proved to be beyond the reach of this court's process, to wit:

Question. Are you established at Alachua?

Answer. I am.

Question. How long have you been established?

Answer. One year.

Question. From whence came you?

Answer. From France.

Question. From what part of the United States?

Answer. From Delaware county, State of New York.

Question. By whom were you engaged to come to this country?

Answer. By Mr. Levy, now present.

Question. How long are you from France?

Answer. Six years.

Question. Were you in this country all that time?

Answer. No; in the United States?

Question. Did any other persons come with you from New York to Alachua?

Answer. Yes; twenty-seven or twenty-eight.

Question. For what purpose did you come to Alachua?

Answer. To cultivate the olive, vine, and other productions of the south of France.

Question. Who paid your expenses?

Answer. Mr. Levy paid my expenses from the north, as well as the persons who came with me.

Question. Did you know what were the expenses of yourself and the other persons from New York to Alachua?

Answer. I do not, but imagine them to be very great.

Question. Were not you and the other settlers engaged as permanent settlers?

Answer. We were.

Question. How have you all been supported at Alachua?

Answer. By provisions principally furnished by Mr. Levy.

Question. Has not the maintenance of the settlement been very expensive?

Answer. Yes, very expensive.

Question. For what purpose do you leave the territory?

Answer. For the purpose of bringing my family, and two other French families.

Question. How many houses are there built at Alachua?

Answer. There are about twenty finished, and about as many not.

Question. How many persons are there at the establishment?

Answer. About fifty-odd, white and black.

Question. How many negroes are there?

Answer. Seventeen or eighteen.

Question. Do you know that there are a great number of families in Europe engaged to come to Alachua?

Answer. I have understood it from Levy, and a Mr. Warburg.

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Question. Where is Mr. Warburg from?

Answer. From Hamburg.

Question. When did Mr. Warburg arrive at the settlement?

Answer. At the same time I did.

Question. Are the settlers now at Alachua engaged in drawing and making new settlements?

Answer. Yes, certainly.

Question. About what quantity of land is there cleared?

Answer. About seven or eight hundred acres.

Question. How many acres of land has there been cultivated this year?

Answer. I cannot say, but I believe about two hundred.

Question. How many acres have the settlers cleared?

Answer. Mr. Levy has about one hundred and twenty.

Transcript of the testimony of *Francis P. Sanchez*, taken before the Board of Land Commissioners for East Florida, and to be read in evidence in this case—it being proved that the said Francis P. Sanchez hath departed this life, to wit:

Question. Were you employed by Messrs. Mitchel and Arredondo for the purpose of furnishing supplies for the Alachua settlement?

Answer. I was employed in the last of 1820 or 1821, by Messrs. Mitchel and Arredondo, to procure supplies for the Alachua establishment. I was busied, from the time of my engagement with Messrs. Mitchel and Arredondo, in furnishing supplies, till the last of 1822, to the amount of four or five thousand dollars.

Question. What were the supplies which you furnished?

Answer. They were principally provisions; some few dry goods.

Question. Did you understand whether the supplies were for the purpose of making a settlement, or entering into trade?

Answer. I understood they were intended for a settlement.

Question. Are you aware of any other expenses incurred by the company than those in which you were concerned? and was the amount large or small?

Answer. As large, or larger than those in which I was concerned.

Question. Were these expenses incurred during the time in which they were contracting their expenses with you?

Answer. They were.

Question. Who incurred them?

Answer. Messrs. Arredondo and Mitchel.

Question. Do you know, of your own proper knowledge, that this settlement was made by Mr. Levy?

Answer. I know it only from my correspondence with Mr. Levy's agent. I had written to Mr. Wanton, Mr. Levy's agent, giving him directions concerning the erection of buildings, &c., from Mr. Levy; and from the agent, I received letters, saying that the works and improvements had been attended to, and were progressing as fast as possible.

Question. How long were you employed by Mr. Levy to furnish him with supplies for his settlement?

Answer. From March or April, 1822, until some time in the beginning of 1823.

Question. What was about the amount of the supplies furnished for Mr. Levy?

Answer. About 15 or 1600 dollars.

Question. Do you know of any other expenses incurred by Mr. Levy for this settlement?

Answer. I do: he has paid in my presence moneys to different persons for the settlement, besides not less than 14 negroes, which I received from Mr. Levy for the settlement at Alachua.

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Question. Can you form any estimate of what amount Mr. Levy expended upon the settlement?

Answer. I suppose he has expended from three to five thousand dollars, exclusive of his account with me, and the cost of the above 14 negroes, beside stock sent there by Mr. Levy.

DECEMBER 1, 1829.

Antonio Alvarez, sworn as a witness in open court on behalf of the claimants, states, that he first entered into an office of the Spanish Government in the year 1807, as clerk of the Government Secretary of this province; that he remained as such till December, 1808, when witness went to Havana, and remained there till June, 1810, at which time he again returned to this place, when he resumed the station of clerk in the same office mentioned above; quit that office again in 1814. In August, 1815, the witness was appointed by the King chief clerk in the office, the duties of which he performed till the change of Government. In this office, in which witness was chief clerk, all *concessions* of lands were made; the *royal title* or absolute grant proceeded from the Escribano's office, which was distinct from the Secretary's. Witness states, that the Secretary's office, where he acted as clerk as aforesaid, was the office where the Governor personally attended, and transacted his duties, except such as were of a judicial character: Witness states, that, during the whole time that he was in the Secretary's office, as above stated, he never saw nor heard of a map marking upon it any Indian boundary or limit. Witness says, that he never heard, either in the office or elsewhere, of any such boundary as existing: he never heard of it at all, so far as he recollects, till since the change of Government. Witness says, that Governor White was very precise in his mode of doing business: he did it without many words; when he

made an order, it was made without explanation, or at least very seldom with explanation, and was carried into execution in the same way.

Cross-examined by counsel for the United States.

Witness states, that he considered Governor White a correct officer—very strict; he does not mean to distinguish between one Governor and another, as to which was most correct and upright in his motives; he means only to speak of their mode and manner of doing business. Some would refuse to grant a petition, or comply with an application in a courteous manner, and by explaining their reasons for not doing so to the applicant; but Governor White was very precise or short in his manner, and, when he refused, would frequently say to the applicant, that "I won't, because I won't," which was his favorite expression.

Witness states, that he is interested in a grant, being sole grantee of the Government, of a tract of land lying, as he supposes, in the Big Hammock, which witness understands to be situated south and west of Black creek and the St. John's. Witness understands it lies about forty miles west of the St. John's. Witness believes that it lies two or three miles from the head of the Ocklewaha. The grant contains fifteen hundred acres, and was made by Governor Coppinger in 1817.

Witness states, that he had never heard, before the exchange of Governments, of any settlement of whites west of the St. John's, in the direction of his grant. Governor Coppinger arrived here on 5th and 6th of February, 1816, and immediately assumed the government of the province.

Witness states, that, previous to the arrival of Governor Coppinger, the Indians were understood to live in the country west of the St. John's. Witness did not understand there were any immediately on the St. John's.

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Witness states, that he never heard of any Indian boundary as existing between the Indians and the British when this province belonged to Great Britain, till since the Government of the country came under the Government of the United States.

Witness states, that, after the revolution and disturbance in this country in 1812 and '13, and during these years, and also in 1814, he had heard from common report of parties from Georgia going into the Alachua country to steal cattle, and of disturbances between them and the Indians; that, during the years 1815, '16, and '17, he heard of no disturbances of this kind in that country; but he heard that a family was murdered by the Indians, who were inhabitants of the province, but not Spanish people, living, he believes, between the St. Mary's and St. John's rivers; but that he knew of no difficulty or disturbances, during any part of this time, between the Spanish people and the Indians, or between the Spanish Government and the Indians.

In answer to inquiry by counsel for claimants, witness states, that his claim to this grant was recommended to Congress for confirmation, but, by some mistake, was not included in the report of the Commissioners to the Secretary of the Treasury.

In answer to inquiry by counsel for United States, witness states, that he is positive he has never seen a treaty held between the British and Indians at Picolata.

In answer to inquiry by counsel for claimants, witness states, that, if such treaty had been in the office of which he was clerk, he should have seen it; there is no such treaty in the office of the public archives, of which witness is keeper. Witness further states, that the office of the Se-

cretary was the proper place for the deposite of such treaty, if it had been in the possession of the Spanish Government.

In answer to inquiry by counsel for United States, witness states, that he formerly saw in the office of the Secretary some few British documents: he believes all that he saw in that office are now on file in the office of the archives, and he believes they relate to the sale of some lots of land.

In answer to inquiry by counsel for claimants, witness states, that Pedro Mirando has been absent from this country in Cuba about two years.

Antonio Alvarez also deposeth and saith, that this deponent acted as chief clerk to Governor Coppinger, and was present at a talk held between the said Governor and some Indian chiefs, shortly after the establishment made by Mr. Wanton on the Alachua; that the chiefs complained that white men had settled on the Alachua; the Governor replied that they were sent there by Mr. Arredondo, with his (Governor Coppinger's) permission, in consequence of Mr. Arredondo having obtained a grant of the land from a person having more power, or a greater man than himself, meaning thereby the Superintendent of the island of Cuba and both Floridas. The Indian chiefs said, in substance, they were satisfied, and would comply with the Governor's request, and not molest or disturb the white men. And this deponent further saith, that this talk was carried on with the usual formalities observed on such occasions—the King's interpreter, Antonio Huertas, being present and interpreting. And this deponent further saith, that the Indians have abandoned the Alachua ever since the year one thousand eight hundred and thirteen, since that time having no regular settlements on those lands. This information is obtained by means of the office of chief clerk to the Governor, and from this deponent's having actually been on the lands.

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DECEMBER 3, 1829.

John Lee Williams, sworn as a witness in open court, on behalf of the claimants, states, that Key Buskine lies but a short distance from the eastern coast, opposite a gulf called Sandwich gulf: what is termed cape Florida is the south point of Key Buskine. Miami river empties into the Atlantic ocean opposite to Key Buskine, perhaps a little northwardly. Key Buskine is about seventy or eighty miles south of Indian river. The most east and southern branches of the Santa Fe, witness thinks, rise about thirty miles west of the St. John's, and, uniting with other branches, coming more from the north and west, form the Santa Fe, which runs in a southwardly direction, till it empties into the Sawanee, more than a hundred miles west of the St. John's. Witness thinks that the old St. Mary's and Alachua trail crosses the Santa Fe fifty miles westwardly from St. John's river. Witness states, that he supposes Miami river is nearly three hundred miles south from lake Munroe, which was considered by Captain Le Conte the head of the river St. John's, though others have considered the sources as much as a hundred miles south of lake Munroe. Witness states, that Miami river is very short, not more than fifteen miles long, and runs east into the Atlantic. Witness states, that the Alachua trail, spoken of above, crosses the Santa Fe in a southwest direction, thirty-five miles from the forks of Black creek, and at a point which he believes is from forty to fifty miles northeast from the mouth of the Ocklewaha. Witness states, that he is conversant with the topography of this country from actual observation, and from information received from others, with a view to the publication of a map of it. The general distance from the Sawanee to the St. John's, witness judges, is over a hundred miles, as much as one hundred and twenty east:

the two rivers run nearly parallel. Witness says that the crossing place at Charles's ferry is upwards of a hundred miles from the St. John's; and the crossing place lower down, at Bowlegs' town, is about the same distance: these two places witness understood to have been the old crossing places in Spanish times.

Cross examined by Counsel for the United States.

Witness states, that the tide flows up the Miami river about four miles; and there is good hammock land about the mouth of it, and well timbered. Witness states, that a place six or seven miles southwest of Miami river would be on tide water, and would be opposite to Key Buskine.

In answer to inquiry by counsel for claimants, witness states, that the mouth of the Ocklewaha is about twenty miles below the north end of lake George.

Transcript of the testimony of *Pedro Miranda*, received before the Board of Land Commissioners for East Florida, and to be taken in evidence in this case—the said Miranda being proved to be beyond the reach of this court's process, to wit:

Territory of Florida.

On the twentieth day of January, in the year of our Lord one thousand eight hundred and twenty-three, personally appeared before me, Waters Smith, Mayor of the city of St. Augustine, Peter Miranda, who, being duly sworn, doth depose and say, that, shortly after Mr. Arredondo had sent Mr. Wanton to settle in the Alachua, this deponent was present at a talk held with the Indians by Governor Coppinger. The Governor directed the interpreter to tell the Indians not to disturb the white men who had settled at Alachua, as the land had been given to Mr. Arredondo by a man at Havana, having more command than himself, and who had command

also over him (the Governor.) This deponent then left the talk, and cannot, from his personal knowledge, say what further took place; but Governor Coppinger afterwards informed this deponent that the Indians were perfectly satisfied that Mr. Arredondo's agent should remain.

PEDRO MIRANDA.

Sworn to before me, the day and year first above written,

WATERS SMITH, *Mayor.*

Transcript of the testimony of *William T. Hall*, received before the Board of Land Commissioners for East Florida, and to be read in evidence in this case—it being proved that the said William T. Hall hath departed this life, to wit:

City of St. Augustine, Territory of Florida.

On the 25th day of July, 1823, personally came and appeared before me, Waters Smith, Mayor of the city of St. Augustine, William T. Hall, who, being duly sworn, doth depose and say, that he is a subject of the King of Spain, and that, about the month of September, in the year one thousand eight hundred and twenty, this deponent entered into an agreement with Peter Mitchel, (who understood that said Mitchel, Arredondo, and others, were owners of a tract of land in Alachua,) to go himself, and employ others with him, to make settlements at Alachua, on said lands: that this deponent shortly after proceeded to Alachua to view said lands, and on his return employed two men, by the names of John Smith and Patrick Lannam, to become settlers with deponent: that, on the seventh day of November, of the same year, the said party reached Alachua, and immediately proceeded to clear lands and erect buildings of the following dimensions: one of twenty by fifteen feet, for the two men, and other settlers which deponent calculated to send on; and one other, thirty

by twenty feet, for the dwelling of the deponent, and for a store. While Smith and Lannam were at work, deponent returned to St. Augustine, having fallen sick, and continued indisposed for two and a half months. Early in January of eighteen hundred and twenty-one, Smith came to town, and reported that the houses were finished, wanting only locks and hinges; which report being confirmed by Burges, a very intelligent half breed Indian, deponent furnished Smith with locks and hinges, and forty dollars in cash, for the use of himself and Lannam. That, on the recovery of deponent, he, understanding that several other settlers, employed by said Mitchel and Arredondo, had made establishments at Alachua, on the aforesaid lands, some of which settlers being personally disagreeable to deponent, he abandoned the project and settlement. And this deponent further saith, that, during the time he was engaged in the before-mentioned settlement, he kept a diary of the occurrences, but which was destroyed by the rains and wet in swimming creeks; therefore, in this deposition he has not stated dates with precision, but to the best of his recollection. And deponent further saith, that the settlement made by himself, Smith, and Lannam, was about one and a half miles east of Old Payne's town. And the deponent further saith, that he is not directly or indirectly interested in the lands granted in the Alachua.

W. T. HALL.

Subscribed and sworn to before me, this 25th day of July, 1823.

Transcript of the testimony of *Frederick S. Warburg*, taken and received before the Board of Land Commissioners for East Florida, and to be taken in evidence in this case—the said Warburg being proved to be beyond the reach of this court's process, to wit :

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Question. Do you know for what purpose Mr. Levy purchased this tract?

Answer. I do, from a correspondence held by me with Mr. Levy since 1816: it was purchased for the purpose of settling it with certain families.

Question. Do you know whether Mr. Levy made any arrangement with these families to come to Florida?

Answer. I know that Mr. Levy did make such arrangements with some of them.

Question. Will you state at what time Mr. Levy first left his home for the purpose of purchasing or procuring lands for the families you speak of?

Answer. He left St. Thomas in 1816, to purchase land for this purpose; the lands were to be purchased in some part of the United States.

Question. At what time did Mr. Levy procure the land?

Answer. I think it was in 1820. I procured this information from Mr. Dalavente, in London, a correspondent of Mr. Levy, who had received letters from Mr. Levy; which letters I saw.

The examination of Frederick S. Warburg, on the part of the plaintiff, taken before Elias B. Gould, a Justice of the Peace for the county of St. John's, in said Territory, to be read in evidence before the Honorable the Land Commissioners to adjudicate on the claims and titles to lands in said District of East Florida.

Frederick S. Warburg being sworn, says: In the fall of the year 1816, deponent saw said Mr. Levy in London: that Mr. Levy informed deponent that it was his intention to settle a number of families in America. In 1820, Mr. Levy informed deponent, through Mr. Delavente, that the families could now

come out, as he had purchased in Florida lands. That Mr. Levy wrote to deponent in 1821, and engaged him to come out to this country. When deponent came out, he staid some time at the north, to wait the arrival of several families, who were also to come for the purpose of forming a part of the contemplated settlement: that, on the arrival of said families, deponent came with them to Florida, (say twenty-two persons, including colored people:) that the families who were principally relied on for the said settlement in the Alachua still remain in Europe, with the exception of some who are now in the United States, waiting for an opportunity to come. Deponent further states, that the number of persons now waiting in the United States, and in Europe, who are expected to arrive at the settlement in Alachua, to form a part of it, is from forty to fifty, and that engagements with them are of long standing: that, from 1821 to this period, deponent has been continually engaged in procuring settlers upon the lands of said Levy in the Alachua, and is still in correspondence with individuals in Europe for that purpose: that deponent, from the knowledge he has of the original plan of Mr. Levy, further states, that said settlement was to consist of about sixty families; that there are about five heads of families on Mr. Levy's settlement at the present time, and twenty-three souls, including fifteen slaves.

Upon inquiry by United States' attorney, deponent states that the reason why the families have not arrived here before this is the inconveniences of accommodation, for want of proper buildings and other necessaries to render them comfortable. Deponent says that he has been acquainted with Mr. Levy since 1816; that he does not know whether he is a Spanish subject.

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Being further interrogated by plaintiff's counsel, deponent says that Mr. Levy has expended about eleven thousand dollars.

F. S. WARBURG.

Affirmed before me, this 7th day of January, 1824.

E. B. GOULD,
Justice of the Peace.

On application of F. S. Warburg to correct an error in the deposition taken before E. B. Gould, Esquire, the said Warburg, being first duly sworn, says, that the twenty-two persons alluded to in the said deposition were partly on account of Moses E. Levy, and partly on account of the Alachua proprietors in general: that the colored people joined deponent in the river St. John's.

F. S. WARBURG.

Sworn and subscribed before me.

W. FLOYD.

THE UNITED STATES OF AMERICA *ads.* FERNANDO M. ARREDONDO AND OTHERS. } *Land claim.*

Testimony of the witnesses, sworn in open Court, on behalf of the United States.

NOVEMBER 23, 1829.

James Hall, sworn as a witness, in open court, on behalf of the defendant, states: That he will have resided thirty-two years in Florida next March. That he has generally understood that there was a boundary established between the British Government and the Indians, by treaty; but with respect to that boundary, as to where it can be found, he knows nothing, except what he has heard from Mr. Cohen; and he cannot say that any thing was said to him by Mr. Cohen on

that subject, till since the transfer of the country. Witness states that he has lived on the place which he now occupies, on the St. John's river, about ten or twelve miles above the Cow-ford, and fifteen or sixteen below the mouth of Black creek, on the east side of the river, twenty-one years. Witness states that, previous to 1812, the Indians had possession of the country to the west of St. John's, and south of Black creek; but that, in 1812, the country was invaded by an armed force from Georgia, headed by Colonel Nunin, and subsequently, early in 1813, by a body of troops belonging to the United States, commanded by Colonel Smith of the American army: the Indians were broken up by these invasions, and left the district of country spoken of. The witness says, that, by the country of which he speaks, he means the Alachua country: its boundary he did not know, but he understood the Indians lived in it, and were driven out, as stated above, in 1812 and 1813; and he did not understand that they returned to the country again till after the invasion of Florida, in 1818, by troops under the command of General Jackson. After they were broken up at Negro fort, the witness has understood that some of them came back again to the eastward, and he understood that a few of them fixed themselves in Alachua country again, in the Black Hammock, but principally settled in the woods near to Dexter's, at a place called Volusia, on the east side of St. John's river: they were, in fact, scattered over the country, even to St. Augustine. Subsequently to the invasion of this country by the party under Col. Smith, as the witness thinks, in 1816, (it might have been in 1815,) this country was again invaded by a party under the command of a person called General Harris, from Georgia. General Harris was killed in the country at this time, 1816, by a small party of Indians, consisting of two or three, and one

negro. The witness states, that, between the time of the invasion of the country by Colonel Smith, up to the time of the death of General Harris, it had been disturbed by repeated marauding and plundering parties, who stole cattle and horses belonging to the Indians, and carried them off and sold them. The witness also states, that, previous to 1812 and 1813, the Indians were possessed of very large stocks of cattle and horses: a few of them, as he was told by the Indians themselves, owned stocks consisting of one or two thousand, and Bowlegs' sister of upwards of two thousand. Witness has understood that Harris's party, soon after his death, left the country; and, as witness has understood, the reason was, because they could not get supplies of provisions. Witness states that he considers that it would have been dangerous for any white man to have gone into the Alachua country subsequent to Harris's death, till after the exchange of flags.

Cross-examined by counsel for claimants.

Witness states that he understood that all the Indians at the Mickasooky towns, and at the Sawanee, by the invasion of General Jackson, were driven to the eastward and southward, across the Sawanee, and these Indians were dispersed through the country. Witness states, that he thinks it would have been dangerous for Spanish people, at the time spoken of in his testimony above, to have gone and settled in the Alachua, but not as dangerous, by any means, as for Americans, as there was a better understanding between the Spaniards and the Indians than between Americans and Indians. The witness states that the Floridians who joined Harris's expedition were considered by the Spanish Government as outlaws, and would have been so treated if the Government could have got hold of them. Witness states, that he supposes Black Hammock, spoken of by him in his testimony, is the

same as Big Hammock or Big Swamp, and lying westwardly and southwardly from Dexter's place, Volusia, so called.

NOVEMBER 24, 1829.

Jacob Summerall, sworn as a witness, in open court, on behalf of the defendant, states: I am a native of East Florida, and have lived on the St. John's, the St. Mary's, and now live in Alachua county, near the natural bridge of the Santa Fé, where I have lived for the last five years. I have always lived in East Florida, except about two years in Georgia, believes in 1815 and '16; was in Florida occasionally during these years, but Georgia was my home. Witness states, that it was in the latter part of 1812, or the beginning of 1813, Colonel Nunin went into the Alachua country, with a party of armed men under his command: the party exceeded a hundred in number; perhaps there were an hundred and forty: witness belonged to the party, but was taken sick at Kingsley's plantation, called Laurel Grove, on the St. John's, and did not accompany the party beyond that place. Witness knows that a party of American troops, under the command of Colonel Smith, of the army, and Colonel Williams, of Tennessee, who commanded the Tennessee troops, about two hundred in number, the whole command being stated at about five hundred in number, also went into the Alachua country some time in 1813, after Nunin's invasion; witness cannot state the precise time. Witness was at this time of the party: acted as pilot for the United States' army. This party destroyed the Indians, and their villages, and their corn, and every thing else they could get hold of; burnt every thing up that would burn, including their corn, except what the party wanted for their own consumption. The principal villages destroyed at this time were, one near Alachua prairie; another about twelve miles southwestwardly, at the Waca-

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hootey; this was Bowlegs' town; another between these villages, south of Alachua prairie: there were other small villages destroyed in other places. The witness says, when their villages were destroyed, all their horses and cattle in the power of the party to collect were taken and driven away from the country by the party, and hogs were killed that could not be brought away, merely to destroy them. Witness thinks that, in the early part of 1814, a party under the command of a person called General Buckner Harris, also invaded the Alachua country: the witness cannot state the number of which this party consisted; thinks it exceeded a hundred. It was composed of persons called patriots, from the United States, and some of them from Florida. General Harris made his first stand, and built a block-house, at the east end of the Alachua prairie: he did not stay there himself, though he was frequently there; but he had gone off to another place to settle a plantation, where he was killed. During the stay of this party in Alachua, (it left towards the latter part of 1814,) parties of Indians were still ranging the country; and witness has been told that a settlement remained not broken up, during all this time, at the junction of the Itchetuckne with the Santa Fé. Witness states, that the settlement at Itchetuckne, he thinks, is about thirty miles northwestwardly from the Alachua savannah. Witness states, that the party of Harris kept dropping off, till they finally all left the country. They left on account of difficulty in getting provisions; and the party becoming quite small, witness supposed they must also be afraid of the Indians. Witness states, that, after the breaking up of the country in the manner mentioned, and the destruction of the Indian villages and their property, by Colonel Smith's and Colonel Williams's party, there were still considerable numbers of cattle ranging

the country, but without any person having them in charge, or exercising control over them; and the cattle were in this situation when the district was invaded by the patriot party, of which witness was one, under the command of Harris. Witness states, that, after Harris's party left the country, he was again in the Alachua several times before the exchange of flags. Witness is unable to state whether he was in the Alachua between the time of its invasion by Harris, and the attack made upon the Indians at the Sawanee by the troops belonging to General Jackson's command. He did not notice the time sufficiently to be able now to recollect; but he thinks that it was during the time he lived in Georgia, in the years stated above, and that it was between 1814 and '17. At the time of these visits, witness found Indians about the Alachua, and all through the country. Witness has since become an inhabitant and resident in Alachua county; he moved his hands there in 1823, as nearly as witness can recollect, and moved there himself, and family, in 1824. At this time he found Indians living in the country, and settled about the Alachua. Witness saw a settlement at this time at a place then called Clapboardtown, lying in what is now called Hogtown. Witness cannot state the distance of this town from the prairie; cannot state the distance to Clapboardtown, but it is nearer than Sanfalasco. The witness states that there were not many Indians at this Clapboardtown, but there were considerable numbers at Sanfalasco, where Roman Sanchez now lives; witness supposes about twelve or thirteen miles from the prairie. There was also a considerable settlement at Itchetuckne, at this time. These Indians, witness states, remained at these places till, under the treaty of Camp Moultrie, they went where they are now settled, within the present Indian boundary. The witness understood there

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was a boundary between the Indians and the Spanish, at least the Indians always claimed it, commencing at a little creek called Black creek, on the St. Mary's river, running from that place to the head of Black creek, emptying into the St. John's; and that it ran thence, as witness supposes, down Black creek to the St. John's, and thence up the St. John's—the Indians claiming the country south of Black creek and west of the St. John's.

Cross-examined by counsel for the claimants.

Witness states, that Clapboardtown lies north of the prairie, and, witness supposes, in a southeast direction from Sanfalasco. Witness states, that his object in these visits, subsequent to the invasion of the country by Harris's party, was to get Indian cattle wherever they could find them in the country, and to drive them off. The Indians were in the habit of stealing our cattle and horses, and we thought proper to return the compliment, getting theirs in return: there was a warfare carried on between us, and we killed each other wherever we met: this state of warfare was continued till the change of flags. On these visits we went always armed, to protect and defend ourselves; and the parties or scouts were sometimes as small as six or eight, generally about twelve, sometimes consisting of thirty or forty.

The testimony of this witness, so far as the same relates to the Indian boundary, is excepted to by the counsel for the claimants, but admitted by the court.

NOVEMBER 24, 1829.

Samuel Worthington, sworn as a witness, in open court, on behalf of the defendant, states, that he belonged to Harris's party, during the time it remained in the Alachua country. There were parties of Indians about the country; witness did not see them, but understood it was so, and was

sometimes in scouting parties that went in pursuit of these, but never overtook any of them. On one occasion, got three horses, supposed to belong to a party we were in pursuit of. Witness states, that Harris's party went into the country in the very last of 1813 or the first of 1814, and the last of the party left the country in July or August following. Witness thinks Harris was killed about a month before the party left there; he was supposed to be killed by Indians. I was stationed in a block-house at Hogtown at this time. Our party consisted of about thirty or forty. Harris was killed at a place south of us about twenty-five miles, or between twenty and twenty-five miles. Ther ewas another block-house near to the north side of the prairie; but when it was learnt that Harris was killed, this block-house was left, and the whole party gathered into one party at Hogtown, which then amounted to thirty or forty. After the evacuation of Harris's party, witness was not again in the Alachua country till 1824, in the latter part of the year: it might be the first part of the year 1825, but witness thinks it was the last of 1824. Witness found Indians at this time living at Sanfalasco, but they were then preparing to remove within the present Indian boundary: these Indians lived at Sanfalasco in houses, which, from their appearance, might be three or four years old; they had cultivated fields, equal to a smart plantation. Sanfalasco, according to the best judgment of the witness, is twelve or fourteen miles to the north and nearest point of the prairie: the witness states this distance from conjecture, and from having travelled through the woods, when he belonged to Harris's party, frequently. The road which is now cut through it the witness has never travelled, nor does he know that it has been measured. Witness has lived in Florida, with the exception of one year, ever since 1812. Witness states, that in 1812 he

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joined the patriots at St. Mary's river, and came on to the plains near St. Augustine; that, at the end of four months, as near as witness can recollect, he joined a company commanded by Captain Nealy, a volunteer company; that in this company, belonging to the command of Colonel Smith, he remained till March, 1813, and was paid during this time by the United States' paymaster, for his services, by the month—first part at five dollars, and the latter part of the time at eight; that, during the time that he belonged to Nealy's company, he was allowed to volunteer into, and to go with Nunin's party into the Alachua, and, after he came back, was paid for the whole time he was so with Nunin's party, by the United States. After he was discharged from Capt. Nealy's company by Lieut. Bailey, in March, 1813, witness lived at St. Mary's till Harris's party was collected. After Harris's party was dispersed, witness lived about a year in Georgia, upon the St. Mary's, and lived after that in Florida, upon the St. Mary's; lived on the St. Mary's in several places, till he went into the Alachua country, in 1824. Witness has always understood that the prairie was called Alachua prairie. Witness states, from the time Nunin's party went into the country, till the exchange of flags, the country was in a continued state of disturbance, from the marauding parties of the whites or of the Indians. Witness did not see this, but understood so at the time, and knows four or five men that belonged to a party that went out in 1817 or '18, that were killed. Witness states, that he has always understood, ever since he arrived in the country, which was in 1811, that the Indian boundary was as stated by M. Summerall in his testimony, to wit: Commencing at Little Black creek, on the St. Mary's, and running to the head of Black creek, emptying into the St. John's; thence down Black creek to its mouth,

and up the St. John's. Witness does not speak Spanish, and has never heard any Spanish people speak of this boundary: he derived his information respecting it from the people who lived on the St. Mary's, on the St. John's, and by the patriots. The witness states that his information was derived altogether from those people called patriots, except from a party of workmen upon Little Black creek, who told him the same thing eight days before he joined the patriot party under McIntosh; this party consisted wholly of Americans, but supposes Underwood, one of the number, was a Spanish subject. The witness states, that the boundary was a subject of frequent conversation, as those who wished to settle were unwilling to go within the Indian limits, as it was generally understood the Indians would not permit the settlement of whites within those limits; these limits included the country south of Black creek, and west of the St. John's; the Alachua is in the district of country spoken of by him above.

The testimony of this witness, so far as the same relates to the Indian boundary, is excepted to by the counsel for the claimants, but admitted by the court.

NOVEMBER 25, 1829.

Britton Knight, sworn as a witness, in open court, on behalf of the defendant, states, that he came to East Florida in the year 1807, and has resided here ever since: that he belonged to the patriot party; was under McIntosh: that the patriots were promised five hundred acres of land each, and warrants, in some instances, were given to them before they went into the country—some after: they were told that this was done under the authority of the United States, and that the lands were to be guarantied to them by the United States. McIntosh was attended by a body of United States' troops, but, according to orders, United States' troops never preceded the

patriot troops, but they kept very close together. Witness did not accompany this party into Alachua; first entered Alachua with Harris's party, in January, 1814. Harris took his first station at the northeast end of the prairie, and remained in the Alachua country till the August afterwards. Harris himself having been some time killed, during the stay of Harris's party in the country, the Indians, in parties, were still ranging through it, but, when discovered, were pursued and driven off by the Americans, or Harris's party; their station seemed to be to the south, towards the Sawanee. We did not burn up their villages; Tennesseeans had burnt them up before, but there was one village standing, called Sugartown; whether there were any Indians in it, witness cannot say; but there were negroes; we caught several of them, and carried them in camp; they were carried out of the country, supposes to Georgia. The Sugartown, witness understands, was a little to the west of Orange lake; witness supposes something like 20 miles to the south of the prairie. Witness says that he went through the village with a detachment of Harris'scommand; looked like an old village. The party, as they approached, was discovered, and those that inhabited it fled; they overtook some negroes, but saw no Indians. Witness was not again in the country till 1823, when he went and settled at Alachua, at Hogtown; at this time, Clapboardtown, so called because the huts are made of clapboards, consisted of three or four clapboard huts, and of four Indians with their families; it was a new village, the huts probably built that year: they had made some corn there that year. In 1824, they left the place, as also did the Indians at Sanfalasco, and went to Big Swamp. I saw Sanfalasco after the Indians had left it; did not look as new as Clapboardtown; from what I saw, and heard, and learnt, of a particular gathering, supposes there

may have been twenty heads of families there, but witness don't know but that some of them came from and belonged to Itchetuckne: there was a smart chance of houses there, but less than twenty might have been that number; did not count them. Witness is not able to state any thing about the country between the time of Harris's invasion and 1823, when he became an inhabitant; but he has heard that, in the interim, Indians were roaming the country, and patriot parties went into the country to get cattle; a party of this description were principally killed by the Indians in 1818, as witness understood. Witness says, that, as to the Indian boundary, he understood that it commenced at the mouth of Little Black creek, run from thence to the head of Black creek, emptying into the St. John's; down Black creek to the St. John's, and up the St. John's, including the country south of Black creek and west of the St. John's. Witness says he was in Augustine in 1809, with Oliver Smith, an inhabitant and a Spanish subject; that Smith's object was to memorialise for and obtain a tract of land in that country described by witness as in the Indian boundary; he was with him at Governor White's, and the Governor told him he could not give him land there, because it was within the Indian boundary, but that he might take land elsewhere. Witness states, that he heard of and always understood the boundary as he has described it, from the conversation of the people on the St. Mary's, and so across to the St. John's; that he never heard the boundary doubted; the people from whom he heard it were generally patriots, but some of them were also Spanish subjects, but not Spaniards: he heard it as well before 1812, the commencement of the patriot operations, as at that time and afterwards.

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The testimony of this witness, so far as the same relates to the Indian boundary, and the refusal of Governor White to grant lands to said Oliver Smith within said boundary, is excepted to by the counsel for the claimants, but admitted by the court.

Cross-examined by counsel for claimants.

Witness states, that he has been at Sanfalasco since the Indians left there: that it has been altered by Roman Sanchez, who bought the improvements there from the Indians, as he was told. The Indians at Clapboardtown belonged to Hicks's party, as he understood. Witness says, that, at the gathering which he spoke of, he understood there were as many as twenty Indians, but can't say there were twenty heads of families, or that they all resided at that place. Witness says, that, when he returned to Alachua in 1823, there were no other settlements he heard of or knew about Alachua, than Clapboardtown, Sanfalasco, and Itchetuckne, which he has heard of, but did not see. Witness says, that, by Alachua country, he means all the country south of Black creek, and west of the St. John's, to the Sawanee; this was understood by the Americans, but witness has learnt the name Alachua, by the Indians, meant only the savannah, which, in the Indian language, is the same as *jug* in the English; and was so called by the Indians because the water sinks into the ground near the lower end of the savannah or prairie, as water sinks into a *jug;* and Sanfalasco, the witness understood, imports, in the English language, *bottle*, the water there also sinking into the ground in the same way. The Sanfalasco Indians belonged to Hicks's party. That the Indians which belonged to Hicks's party, and which were settled at Clapboardtown, and at Sanfalasco, had not formerly, and in 1812, belonged to the Alachua, or to any party of Indians resident in that vicinity; they lived west of

the Sawanee, till broken up by Gen. Jackson, in 1818. The Indians that had formerly lived in and about Alachua were Paine's and Bowlegs' Indians; but Paine's, particularly, lived in Alachua, about the prairie, and the witness has understood were also nearly destroyed by the inroads made upon them in 1812 and '13, and particularly by Nunin's party: this he has been told by the Indians also, and that there are but few remaining, and that he did not know that these Indians ever came back; what became of them, witness don't know; their towns were vacant when he came back to the country, in 1823; witness understood they were at the Big Swamp. Witness says that Hicks's party, Paine's, and Bowleg's, were all called Seminoles, and, when in a state of war, were under the control of Hicks, he being the greatest chief. Clapboardtown is fifteen miles from Levy's, and six miles from the nearest point of the prairie; Sanfalasco is twenty-two miles from Levy's, and sixteen from the nearest point of the prairie; Itchetuckne is a more distant place than Sanfalasco; witness thinks it is fifteen or twenty miles more distant, but witness can't speak with certainty of the distance. Witness states, that, if there had been any other settlement of Indians near to the Alachua savannah, or as near as those he has spoken of, he thinks he must have heard of them. Witness states, that at this time there were none on the great survey, that is, the Arredondo land; if there had been any, he must have heard of them. Witness states, that Clapboardtown is without the supposed limits of the Arredondo grant, and witness lives within the supposed limits two hundred and fifty yards. Witness states, that Big Swamp is within the present Indian boundary; and witness thinks that the nearest limit of the Indian boundary is about twenty-five miles from the nearest point of the prairie; a part of Wacahootey, formerly called

Bowleg's town, witness understands, is within the limits of the Arredondo grant. Witness says, that he has understood that the Indians who inhabited about the Alachua had large stocks of cattle; has seen large herds come from the hammock into the prairie; he supposes there may have been a thousand at a time; this was in the patriot times, when he was with Harris; he saw no cattle there when witness returned to the country, in 1823, but was over the ranges repeatedly, and should have seen them, he thinks, if there had been any; but the Indians, as he understands, and he so understood both before and since the transfer of the country, finding that the whites, when they invaded the country, were in the habit of taking and driving away their cattle, concluded that the possession of these cattle was the cause of the attacks and troubles to which they were subjected, and went themselves and killed their cattle, to be relieved from these troubles in future.

NOVEMBER 25, 1829.

William H. Ward, sworn as a witness, in open court, on behalf of the defendant, states: That he became a resident of Florida, in Alachua, in 1823; had before that time been an inhabitant of Georgia. Witness came from Georgia into Alachua, and joined Harris's party soon after it went into that country, and remained with it till it left there. During this time, when out in detached parties from their main command, we found parties of Indians also ranging the country. Witness found no settlement where they lived, but understood from others of the command that the place at Itchetuckne was occupied by the Indians at that time; there was a considerable number of cattle in the country at this time, but witness did not see many horses. The last of Harris's party left the country in July or August, 1824, as well as witness can recollect.

After Harris's party left the country, witness was repeatedly, perhaps every year, up to 1818, in the country, with parties that entered it to obtain cattle and kill Indians: the same thing was done by the Indians, who even crossed the St. Mary's into Georgia, and took cattle and killed the whites. Witness says, that, in making these incursions, they found Indians in the country, ranging about apparently to drive off cattle, and especially in 1818 the country appeared to be filled with them, but found no settlement except a small clearing in the Big Prairie Hammock near the savannah: at this clearing we found no Indians, but found some encamped about two miles from there. Witness saw no house or hut at the clearing, or elsewhere about there, but it was a new clearing, and a fence was commenced; can't state how large the clearing was; might have been half an acre; might have been larger; can't state how large the clearing was. Skirmishes frequently took place between the whites and the Indians, and, at the time in 1818 when the clearing was discovered, six of one party were killed, and two wounded. Witness still found numbers of cattle in the country in 1818, but not as many as formerly, it appearing that the Indians were driving them off: we discovered the trails of cattle going towards the Sawanee to the west, and also trails towards the south: he found cattle also shot down; all of which we supposed must have been done by the Indians, as there were no other whites there but one party. In 1823, when he went to Alachua, he learnt that there was an Indian town between Picolata and the head of the Santa Fe, as witness supposes, south of Bellamy's road. Witness saw some Indians in Alachua, that said they belonged there. Witness, from his understanding, supposes it was about 12 or 14 miles from St. John's, and seven or eight miles from the head of the Santa Fe: understood there was a considerable

number there in 1823. I first heard at this time, in the year 1821 or 1822, from William Daniels, while living on the St. Mary's, that Paine was killed in Nunin's battle, and Bowlegs, as witness understood, succeeded to the command of the Alachua Indians; after this, Bowlegs went over the Sawanee to a place called the Clay Hills, as witness has been informed; and that, after the Indians were broken up on the other side of the Sawanee by General Jackson's command, he has understood that Bowlegs crossed the Sawanee back again; but where he went, witness does not know, and don't recollect that he has heard. Witness says that he was in Hogtown in 1823; it might have been later: he heard of the settlement of Clapboard and Sanfalasco, but saw the chief of the Sanfalasco village at Hogtown; he heard of no other settlement any where about the Alachua. Witness states that the Indian boundary is the same as the other witnesses state, and that he has always heard of it, when he has heard of any thing about it: ever since he was a boy he has frequently heard it spoken of; and the Indians would not suffer people to settle within this boundary, as witness has understood.

The testimony of this witness, so far as the same relates to the Indian boundary, and so far as the same relates to the Indian town between Picolata and the head of the Santa Fé, is excepted to by the counsel for the claimants, but admitted by the court.

NOVEMBER 30, 1829.

Daniel Hurlbert, sworn as a witness, in open court, on behalf of the defendant, states, that he has resided in this town (St. Augustine) since 1802, but followed the sea till 1821, but that two years of that time he resided here constantly. Witness became a Spanish subject immediately on his arrival

here in 1802. Witness states, that in 1808 he and one Bushnell applied to Governor White for permission to cut cedar on the west side of the St. John's, and to the southwest of Black creek; and that Governor White refused to grant them permission to cut timber there, alleging that it was within the Indian boundary, and beyond his jurisdiction; but the Governor gave them permission to cut on the east side of the St. John's. Witness states, that, at the time he applied to Governor White for permission to cut timber, the Governor showed him a map, on which the Indian boundary was marked, and that the place from which he asked to cut timber was within that boundary; and that the Governor told him that the boundary was the same as when the province belonged to the British, and that it had remained so till the time of which he spoke. That, before McIntosh's revolution, the Indians occupied, and had large stocks of cattle in the Alachua country: that, after the revolution, they were pretty much broken up, and rambled about the country, and their cattle were stolen in large droves, as much as three or four hundred at a time, by the Americans, from across the St. Mary's, and on this side too. Witness adds, that the Spaniards did not dare to venture into the Alachua country to make settlements till after the exchange of flags. Witness states, that he always understood that the Indians claimed the Alachua country; that he has understood so since they were broken up in 1812, '13, and '14; that they came back into the country after that, and collected horses there, and made some settlements; but whereabouts those settlements were made, witness cannot say. Witness states that Governor White died in this city, in 1811.

Cross-examined by counsel for claimants.

Witness states, that he understood that the Indians, after the disturbances in 1812, '13, and '14, still persisted in their

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claim to the country, because he understood they came back to it, drove off Harris's party, and killed Harris, and occupied it again, as he has stated above; and there were no other settlements in the country at that time but Indian settlements; and that the witness also understood it from the common report of the people of the country. Witness also states, that he has heard the same thing stated by the Indian traders. Witness states, that he has had such an understanding of the Spanish language for the last twelve years as to understand common conversation; has not understood it longer.

The claimants object to the testimony of Captain Hurlbert, so far as it states what Governor White *said* was his reason for refusing to permit the witness to cut cedar on the west side of the St. John's, above Black creek, because it is hearsay of a particular fact, by which representation cannot be established; and also as to what the witness states Governor White *said* about the Indian boundary, as hearsay; and also on the ground that the whole of his testimony above mentioned is irrelevant to the issue. The claimants also object to Mr. Hurlbert's testimony as to what he heard certain Indian traders say, as to the Indians claiming the Alachua country, because it is hearsay.

NOVEMBER 30, 1829.

Anthony Rutant, sworn as a witness, in open court, on behalf of the defendant, states, that he went to Alachua as an associate of Mr. Levy, from St. John's river, in July, 1822, to settle on a piece of land there, claimed by Mr. Levy; that some of the Indian chiefs came to him, after he had been there a few days, and told him that they had previously told him, at the St. John's, not to come into the Alachua country to settle there: one of these chiefs was Micanope; another of

them was called Jumper: he heard that others among them were chiefs, but whether they were so, does not know. Micanope told him that that place was theirs, (the Indians;) that the bones of their ancestors lay there, and that he would suffer decapitation before he would give the place up: he was at this time at the house occupied by Mr. Wanton. At the distance of eight miles from Mr. Wanton's, on the road from Wanton's to Big Swamp, he passed through an Indian negro village. Witness states, that he understood Mr. Wanton's house was at the centre of the Arredondo and Son grant. Witness says, that the same Indians who met him in Alachua in July, above stated, had, in June previous, been to the place then occupied by him, called Hope Hill, on the west bank of the St. John's, and told him that that place was theirs; but, as they were pleased with him, they would permit him to remain; but that they had heard that he was preparing to go to Alachua to settle, and they forbid him to do so. Witness went to Alachua again in the month of February, 1823; he then saw some Indians going about, but they said nothing to him.

Cross-examined by counsel for claimants.

Witness states, that he settled at Hope Hill in the beginning of March, 1822: that the same Indians had visited him several times before the visit in June, but they said nothing about their claims, except the first time, when they were intoxicated; they then told him that they owned the land where he was. Witness states, he has suspected that the Indians were induced to say what they did to him by a white man, but is not certain; and that, on the two occasions mentioned by him, when the Indians declared Hope Hill to be theirs, they had come from this person's place. Witness says, that when they did not come from that place, they were quiet, and said

nothing on the subject. Witness states, that he has understood that there was an altercation, but did not know the particulars of it, between that person and Mr. Levy. Witness states, that the person and himself, as the associate of Mr. Levy, had goods to dispose of to the Indians, and that none could be purchased in that vicinity but of those two, and that liquor could be obtained only from this person. Witness states, that his design of going to Alachua had not been mentioned to the Indians by him; does not know that the person referred to by him knew it. What the Indian said in March to witness was reported in English by an Indian to a young Frenchman present, who understood English, and by him interpreted in French to witness; and what was said in June to him was interpreted to him by an Indian negro, who understood Spanish, which witness himself understood. Witness supposes the persons referred to had great influence over the Indians.

Examined by counsel for the United States.

Being inquired of by counsel for the United States, who the person was to whom he has referred, as suspecting him to have instigated the Indians to the course they took, as stated by him above, replies, that it is a mere suspicion with him; he is unwilling to name him; and the inquiry was thereupon no further insisted upon.

Witness states, that, at the interview of the Indians and the witness at Alachua, an Indian negro interpreted for him, by the name of Abraham, so far as witness can recollect, who came with Micanope. Witness states, that, at the time witness went to Alachua, to settle there, in July, 1822, there were at Mr. Wanton's place Mr. Wanton, his children, a colored woman, and two men that Mr. Levy had sent there, and himself; he did not know or hear of any other settlements there.

The counsel for the claimants object to the testimony of Mr. Rutant, as to what he heard from, or what was told him by, the Indians, because it is hearsay—including all that the said Indians said to him about their having a claim to the Alachua country, for the same reason, that it is hearsay; also, to all his testimony of information collected from rumor and report.

DECEMBER 2, 1829.

Francis P. Fatio, sworn as a witness, in open court, on behalf of the defendant, states, that, in 1774 or '75, he understood at that time, and has since understood, that a talk or treaty was held by Governor Tonyn with the Florida Indians at the Cowford, for the purpose of agreeing upon a line of demarcation between the Indians and the British, or of recognising one previously established. Witness states, that his impression is, and the general impression was, as it was talked of publicly at the time and afterwards, that the boundary agreed upon or recognised at this time run in a direction north and south, and nearly parallel with the St. John's, about fourteen miles, more or less, west of the St. John's, in the neighborhood of Black creek. Witness has no impression as to the northern or southern limit of this boundary. Witness lived about 14 miles below the Cowford at the time of this talk, and was then in his thirteenth year. Witness says his father was at the treaty; staid there but one night, as he believes.

Cross-examined by counsel for claimants.

Witness states, that he left the country in 1782; went with the British regiment to which he belonged into the Carolinas: when peace took place, went to England, and did not return to this country till the latter end of 1793, and has lived a resident of it since that time.

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The opinion of the Honorable Joseph L. Smith, Judge of the Superior Court for the District of East Florida, upon the claim of Fernando de la Maza Arredondo and others against the United States, delivered on the first of November, 1830.

In the Superior Court for the District of East Florida.

FERNANDO DE LA MAZA ARREDONDO AND OTHERS *vs.* THE UNITED STATES. } *Land claim.*

This claim is presented to the court under the sixth section of the act of the first session of the twentieth Congress of the United States, approved the 23d May, 1828, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and is founded on a grant from Don Alexandro Ramirez, Intendant of the Army, and Superintendent General and Subdelegate of the Royal Exchequer of the Island of Cuba and of the two Floridas, dated the 22d December, 1817.

This grant is fairly translated as follows: "Don Alexandro Ramirez, Intendant of the Army, Superintendent General and Subdelegate of the Royal Exchequer of the Island of Cuba and of the two Floridas, &c. &c. &c."

"Inasmuch as Don Fernando de la Maza Arredondo and Son, merchants of this city, have presented a memorial to this Intendancy, of the 12th November last, in which they pray for a gratuitous concession of a tract of land in East Florida, where they have been established, and where the greater part of their family, together with most of their property, yet re-

mains; offering to make an establishment in the territory, known by the name of Alachua, it being adapted for the raising of cattle and the culture of provisions, composed of 200 families, which they are to convey at their cost, and setting forth other advantages which will result, not only in favor of the other inhabitants already established, and citizens of St. Augustine, but also to the Creek and Seminole Indians, who bound that country; provided they have given to them, in actual fee simple, the said grant, reduced to 4 leagues of land, like the radius of a circle, the fixed point of which in the aforesaid land of Alachua; and the said petition having passed, by my decree of the 12th instant, to the Captain of Infantry, Don Vincente Pintado, Surveyor General of the Floridas, who made his report on the 15th of the same, with all the explanation necessary, and solid reasons, which make known the necessity and utility of providing for the increase and population in the said province, without expense to the royal treasury, and of accepting the propositions of the petitioners, on account of the importance of the undertaking, and the great expense of carrying it into execution; in consequence of which, by the decree of the same day, having consulted the Fiscal of the Royal Exchequer, who, in his representation of the 17th, founded upon royal orders, respecting the increase of population in these possessions of his Majesty, supported the pretension of Don Fernando de la Maza Arredondo and Son, giving his consent that the lands might be granted to them which they solicit, upon the terms which they propose; according to all which, under the date of yesterday, I issued the sentence which follows:

"'Upon examination, and in virtue of the royal order of 3d 'September of the present year, in which his Majesty, hav-'ing appointed me Superintendent of the two Floridas, de-'sires me, in the strongest terms, to procure the settlement of

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'those provinces by every means that my prudence and zeal 'can suggest. In conformity with the Fiscal, and the report 'given by the Surveyor General of the said provinces, I de- 'clare as crown property the territory of Alachua, in East 'Florida; and, in consequence thereof, and at the same time 'taking into consideration the notorious probity, fidelity, and 'known wealth, besides other recommendable qualities of 'Don Fernando de la Maza Arredondo and Son, I grant them 'the part which they ask for in the said crown land, *in full* '*property*, according to the royal disposition relative to the 'matter, and with the precise obligation of their binding 'themselves to establish there 200 families, which must be 'Spanish, together with all the requisites which are pointed 'out to them, and the others which will be pointed out by 'this Superintendency, in virtue of the said royal order, on 'their beginning their establishment within the term of 'three years at most, without which the said grant shall be 'considered null and void; which, also, is to be understood 'without prejudice to a third person, and especially to the 'native Indians of that soil, who may have returned, or wish 'to return, to establish themselves there again.

"'Let this process pass to the said Surveyor General, in 'order that he may form a corresponding draft of the same, 'according to his report, and to the extent conceded of 4 'leagues radius in measurement, of right line figure, with 'the utmost clearness, so as to avoid any kind of doubt or 'litigation hereafter, and, this done, let him be furnished 'with a title in full form, attached to the said draft, a copy 'of which will be kept in the process; it being understood 'that the said three years for the commencement of the 'establishment of families must run and be counted from 'this date. And whenever any of these settlers shall have

'been admitted and transported there, the grantee will give 'notice of the same, with a list of the individuals, a description of their birth-place, their origin and profession, that the 'necessary orders and instructions be issued to the Governor 'of the Royal Exchequer of East Florida, and an account of 'the whole given as soon as possible to his Majesty.

"'Upon the view of the figurative plan formed by the said 'Suveyor, with the explanations made by him in continuation 'of the survey and boundary, it results that the land is 'situated in East Florida, at 52 miles (a little more or less) 'to the west of the city of St. Augustine, and about 36 miles 'to the west of the east border of the river St. John's, bounded on all sides by vacant lands, towards the centre of which 'is a spot known as Alachua, inhabited in other times by a 'tribe of Indians of the Seminole nation, who abandoned it; 'and, according to the dimensions and form given to the 'land at that plan, a description annexed to it, it appears that 'the leagues used in that province being 3 English miles, of '1760 yards each, or 80 chains of Gunter, the space thus contains 289,645$\frac{5}{7}$ English acres, equal to 342,250 arpents of 'those used in West Florida, and counting for every English 'acre 160 superficial perches, and 16$\frac{1}{2}$ feet of London for 'every English perch, according to usage in the time of the 'British sovereignty, and which has been tolerated since by 'our Government. Wherefore, in use of the faculties which 'the King our lord, whom God preserve, has granted to 'me, and in his royal name, I grant gratuitously to the said 'Don Fernando de la Maza Arredondo and Son the quantity 'of acres of land of which mention is made, under the boundaries, courses, and distances, which are exhibited upon the 'figurative plan, of which a copy will be annexed to this 'title, in order that, as their own property, they may possess

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'and enjoy it, as exclusive owners, and in the terms express-
'ed in my decree inserted therein. In testimony of which,
'I have ordered this title to be issued, signed with my hand,
'sealed with the royal arms as used in my Secretary's office,
'and countersigned by the Commissary of War, Don Pedro
'Carambat, Secretary for his Majesty to this Intendancy.

"'ALEXANDRO RAMIREZ, [L. S.]

"'PEDRO CARAMBAT.'"

From the terms of the grant, as recited, it is seen, *First.* That it is made of a tract of land lying about fifty-two miles west from St. Augustine, and thirty-six miles from the river St. John's; that its centre is near the *spot* known as Alachua; that it has an extent of four leagues radius, or to each wind, and is in figure rectilineal;* and that it is stated to contain 289,645$\frac{5}{7}$ acres.†

Second. That the land granted is declared by the Intendant, in conformity to the advice of the Fiscal, and the report of the Surveyor General of the Floridas, to be crown proper-

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* The words directing this extent and figure in the grant, are, "pase este expediente al expresado agrimensor General, para que forme el plano corespondiente *arreglado à su informe*, y à la extension que se concede de quartro leguas à cada viento, *en medida y figura rectilinea* con la posible claridad, que evite dudar y litigios en lo sucesivo."

The Surveyor General had stated in his official report to the Intendant, that, as the land belonged to the crown, no obstacle existed against making the grant, yet to make it in the contemplated circular form might produce confusion, and that the measurement or survey ought to be in right lines: and therefore the above order, "that the survey be in a *figure rectilineal.*"

† *A rectilineal figure,* extending from the centre four leagues to each wind, is identical with a tract eight leagues square, the contents of which are 368,640, instead of 289,645 and five-sevenths acres: but the language of the grant, altogether, makes it evident that the intention was to convey only the last named quantity; and that, in square form, 289,645 and five-sevenths acres will somewhat exceed a tract seven leagues square, and will have an extent of a small fraction more than three and a half leagues radius.

ty; that it was inhabited formerly *(en otro tiempo)* by a tribe of the Seminole Indians, but that they have abandoned it, and that it is surrounded on all sides by vacant lands.

And, thirdly. That, in the exercise of the faculties conferred upon him by the King, it is granted by the said Ramirez to the *grantees*, in *full property*, *(en toda propriedad,)* that they may possess and enjoy it as the *exclusive owners thereof*, but without prejudice to third persons, and especially to the Indians, *natives of that soil*, (suelo,) who may or would wish to return to *plant* there; and that it is subject to the condition *subsequent*, that the grantees establish on the tract two hundred *Spanish* families, at their own cost; the establishment to be commenced within three years from date, the 22d December, 1817.

The following is the report of the Fiscal, the Attorney General for the crown.

The Fiscal says, that Don Fernando de la Maza Arredondo and Son, having the greater part of their property in East Florida, solicit your lordship to concede to them wherewith to form a settlement there, obliging themselves to transport and establish two hundred families on the lands known by the name of Alachua, situated to the west of the river St. John's, 12 leagues distant from its border, (more or less,) provided you assign and adjudge to them 4 leagues radius from its central point; seeing they are at present uninhabited, and therefore the exclusive property of his Majesty. The Surveyor General of the province, whose report you directed to be made in this material, states, that no obstacle exists to declaring the said lands as property of the King, and in their being granted to Arredondo the part he solicits, under the conditions he proposes, provided the measurement be not circular, in order to avoid confusion. It is well known the interest

which our Government has taken in increasing and settling this part of its possessions. Different royal orders have been issued to this effect, authorizing the Intendants of those provinces to make grants of land to those who should propose to settle in them; and particularly that of 29th of October, 1790, transmitted by the Governor and Captain General of this Island, who then held the superintendence. The proposition of Arredondo cannot be more advantageous. He binds himself to transport and settle 200 families—an undertaking which, must cause immense disbursements; and if this should be ever realized, beside the advantage which will accrue to the State from the increase of population there, always recommended by our Government, another benefit will also result, that evil disposed persons will no longer find an asylum there, from whence to sally forth to repeat new crimes and disorders.

Therefore, he is of opinion, that, having declared belonging to the King the said territory of Alachua, you should concede to the said Don Fernando de la Maza Arredondo and Son the grant they solicit, of 4 leagues radius from a central point, furnishing him with the necessary titles of possession of the said radius of 4 leagues, in order that he may hold the same in fee simple, and make a beginning of his settlement, or as your Lordship may otherwise determine. Havana, 17th December, 1817.

FIGURA.

From this report, it appears, that the lands granted belong to the Crown; that they were uninhabited, and that the Attorney General consented and advised to the grant, and to the making of it, in fee simple, to the grantees.

To the confirmation of this grant, it is objected by the counsel for the United States—

1st. That Ramirez, the Superintendent of Cuba and the two Floridas, was not empowered to make grants of the magnitude of the one in controversy;

2d. That if the quantity did not exceed his powers, still he was not authorized to grant lands within the Indian boundary; that this grant was within such boundary, and therefore against the laws and policy of Spain, and void; and

3d. That the conditions of the grant, as to the establishment of 200 Spanish families, have not been performed, nor any valid excuse shown for the non-performance.

These several objections will be considered in the order stated.

To decide, on the first point, the powers of the Superintendent satisfactorily to myself, or intelligibly to others, it becomes necessary to review the laws and ordinances, so far as we have had access to them, prescribed by the Kings of Spain for the regulation of their royal domain, and to consider the policy of the mother country, and the practice and usages of her provincial authorities in America, in the discharge of their official functions, as to matters relating to the subject of inquiry.

Under this head, I shall endeavor to ascertain the powers of these authorities as to granting the lands of the Crown—

First. As rewards;

Secondly. For the purposes of settlement and population.

Among the earliest regulations for the Government of Spanish America, in 1542, just fifty years subsequent to the discovery of the new world by Columbus, the Emperor Charles passed the following decree, recognised successively by Philip II in 1588, Philip III in 1614, Philip IV in 1628, and by Charles II. in 1682, it being then incorporated in the Recopilacion de Leyes de las Reynos de las Indias.

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"It is our will, and we ordain, that the Viceroys of Peru and New Spain, the Governors of the provinces under their authority, that they rule and govern the same in our name; and that *they* grant such *rewards, favors*, and compensation, as to *them may seem fit.*"—1 Recop. 545, lib. 3, tit. 3, law 5, White's Comp. 30.

A subsequent ordinance, promulgated by Philip II, and collected from his decrees in 1578, 1589, and 1591, declares that the crown has "fully inherited the dominion of the Indies;" and that the vacant lands not already granted by our predecessors, by ourselves, *or in our name*, belong to our patrimony and royal crown;" and directs, after the reservation of sufficient for the white settlements, having reference to their future as well as present condition, and after granting and confirming to the Indians "whatever they may justly want, to *cultivate, sow*, and *raise* cattle," that then all the remaining lands are to "be reserved clear of any incumbrance," for the purpose of *being given as rewards*, or disposed of according to our pleasure.—2 Recop. 42, lib. 4, tit. 12, law 14, White's Comp. 41.

A further ordinance, also, of Philip II, dated 1575, declares "That it is our will and pleasure that all who have served in the discovery, pacification, and *settlement* of the Indies, be *rewarded.*"

This law, in its subsequent provisions, fully recognises in the Viceroys, Presidents, and other authorities of the Indies, power to confer these *rewards*, requiring no confirmation of them from the Crown. Its language is, "We command the Viceroys and Presidents, &c., when *they shall have occasion to grant such rewards;*" and again, "Those who are entitled to rewards shall make a declaration of their merits and services before the Audience of the district, having previously

summoned our attorney, *who, after consideration, shall grant rewards in our name.*"

This law not only treats of the power as possessed by these public functionaries, but points out the formalities to be observed in exercising it, and the manner in which, by reference to a rule contained in law 14, tit. 2, lib. 3,* the merits of those entitled to rewards shall be ascertained, and their amount graduated.—2 Recop. 18, lib. 4, tit. 6, law 7, White's Comp. 35.

These three laws, found in the Recopilacion, taken together, distinctly assert, that the Crown has inherited the dominion of the Indies; that all vacant lands throughout these vast possessions, not granted out, are Crown property, held free of all incumbrance, for the purpose, among other things, of being given as *rewards* and *favors.* They also show, with equal clearness, that the Viceroys, Presidents, Governors, and other officers of the Indies, are empowered, within their respective spheres and limits, to grant these awards and favors *as to them shall seem fit;* indeed, that they are expressly enjoined and commanded to confer them upon meritorious persons, who have been discoverers in the Indies, upon their descendants, upon pacificators and founders of settlements, and upon other persons born in the provinces.

The question, then, as to their powers to grant lands of the Crown as awards, must be viewed as established, limited only by their fidelity, discretion, and judgment, unless, in the pro-

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* By adverting to the rule in law 14, it is found that the following is the order of rank given to the persons entitled to rewards:

1. The discoverers of the Indies, and their descendants;
2. The pacificators and founders of settlements, and those born in the province;
3. Married persons, who are always to be preferred to those that are single.

gress of this investigation, by some subsequent order or regulation, it shall be found to have been rescinded or qualified. With the reservation of a careful and continued attention to this point, I will now proceed to the inquiry as to their power to grant these lands for the *purposes of settlement* and *population.*

For this purpose, I cite, in the first place, the law directing that "*lands, lots, and Indians* be granted to new settlers; and what is a *peonia,* and what a *caballeria.*" This law, as appears from the caption, is collected from the edicts of Ferdinand V, in 1513, and from various regulations of the Emperor and Philip II; it is given entire, as found in White's Compilation.

"In order to promote the zeal of our subjects in the discovery and settlement of the Indies, and that they may live in that ease and comfort which we desire them to enjoy, it is our will that there be distributed among them houses, lots, *caballerias* and *peonias,* to all those who shall repair to settle on new lands in the villages and places, which shall be designated to them by the Governor of the new settlement, making a distinction between gentlemen or esquires (escuderos) and laborers (peones,*) and those of inferior grade and merit, and *graduating* such grants according to their qualifications and services, in order that they may attend to the working of said land, and to the breeding of stock; and when settlers shall have lived and labored in said settlements during the *space of four yeurs,* they are hereby empowered, from the expiration

* By the term *peon* is understood as well a *foot soldier* as a laborer; and during the reigns of Ferdinand, the Emperor Charles, and Philip II, from whom the above law first emanated, *Spanish soldiers* were much oftener seen in the Indies than *Spanish laborers.* The Indians were the almost exclusive laborers throughout the provinces, till relieved, upon the advice of *Las Casas,* by the *introduction* of negroes from Africa. *Caballeria* is a *knight's* or *gentleman's,* and *peonia* a *soldier's* or *laborer's, share of land.*

of said term, to sell the same, and freely to dispose of them at their will as their own property; and the Governor, or whoever shall thereto be authorized by ourselves, shall, in the distribution which he shall make of the Indians, and according to the merits and rank of said settlers, grant them said Indians, so that they may enjoy the profits arising from their possession, according to the established rates and enactments in that behalf.

"And whereas it may happen, that, in the distribution of lands, doubts may arise respecting the measurement thereof, we declare that a peonia* is a lot of fifty feet front, and one hundred feet deep, one hundred fanegas of arable land fit for the cultivation of wheat or barley, ten for corn, two huebras (a measure equal to as much land as a yoke of oxen can plough in one day) of land for a garden, and eight for planting other trees which grow on dry land, with pasture sufficient for ten breeding sows, twenty cows, five breeding mares, one hundred ewes, and twenty goats. A cavalleria* is a lot of one hundred feet front, and two hundred feet deep, and equal in all other respects to five peonias,

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* To show what is meant by the fanega of grain, and what quantity of land is intended by the above law, the definitions from the Dictionary of the Spanish Academy, with translations, are given. A calculation of the contents of a peonia and of a caballeria, according to the rule supplied by this law, is also added.

Fanega. s. f. Medida de granos y otias semillas, que contiene doce celemines y es la quarta parte de los que en Castilla Claman carga de trigo, porque pesando cada fanaga cerca de quatro arrobas, puede un macho clevar la carga de quatro fanegas. Dice *se* tambien *hanega. Medimnum.*

TRANSLATION.

Fanega. A measure of grain, or other seeds, which contains twelve celemines, (a celemine is about equal to an English peck,) and is the fourth part of what in Castile is called a load of wheat, because each fanega weighs about four arrobas; a mule can carry the load of four fanegas, sometimes called *hanega. Medimnum* is a measure of six *bushels.*

that is five hundred fanegas* of arable land fit for the raising of wheat or barely, fifty of corn, ten huebras of land for gardens, forty for other trees growing in dry soils, pasture for fifty breeding sows, one hundred cows, twenty (five) mares, five hundred ewes, and one hundred goats. And *we command* that *distribution be made in such form that all shall participate in the good as well as in the middling and all other qualities of the land, in the tract which* shallbe allotted to them."—2 Recop. 39, lib. 4, tit. 12. law 1, White's Comp. 38.

Fanega de sembradura. El espacio de tierra en que se puede sembrar una fanega de trigo. *Agri spatium seminationis medimni capax.*

Fanega in sowing. The space of land sufficient to receive a fanega of wheat. *Land sufficient to receive,* in *sowing, six bushels of seed.*

Fanega de Tierra. El espacio de tierra, que contiene cuatro cientos estadales quadrados, y en las dehasas quinientos. Esta medida es mayor en unas provincias que en otras.

Fanega of land. The space of land which contains four hundred square estadales, and of pasture five hundred. This measure is greater in some provinces than in others.

Estadel. s. m. Medida de tierra, que consta de quatro varas en quadro, en algunos provincias varia segun la costumbre.

Estadal. A measure of land containing four square varas, (yards,) varying in the provinces according to their respective customs.

According to Neuman's dictionary, a *fanega of grain* or other seed is a measure of about *one hundred weight,* 112 ibs. English; and a *fanega de sembradura* is an extent of ground which requires a fanega of grain properly to sow it.

According to the testimony of Gomez and Clarke, a fanega of grain, sent on several occasions from Havana, and measured here, was equal to three and a half bushels.

The contents of a peonia.

A fanega of grain, according to Neuman, is about	- -	2	bushels,
" if it consist of 12 celemines, according to the Dictionary of the Academy, it is about	- -	3	"
" according to Clarke and Gomez, it is	- -	3½	"
" if the medimnum be adopted, it is	- - -	6	"

This law, proceeding in 1513 from Ferdinand V, the earliest we have seen relating to settlements in the Indies, has for its avowed object the promotion of discoveries, the settlement of districts already discovered, and the ease and comfort of the subjects of the Crown in the new world. It directs, in express terms, that the Governors, or whoever may be authorized thereto, having charge of settlements, shall make the distribution, and in such form that all such participate in the good as well as in the inferior lands.

Peonias and *caballerias* are to be distributed; and, from the language of the law, if nothing further were to be found on the subject, it might, perhaps, be fairly inferred, though no such limitation is expressed, that one caballeria, only, could

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For the calculation of the peonia, take Neuman's, the smallest quantity said to be equal to a fanega of grain, viz:

100 fanegas of wheat or barley, at two bushels each, *will sow*	200	acres
10 " of corn (maiz) will plant, at 6 acres to the bushel,	120	"
2 huebras for garden - - - - - - - -	2	"
8 " for planting trees - - - - - - -	8	"
10 breeding sows, depending on pasture through the year in this climate, where the lands do not rest in winter, will require, of average land of East Florida, at least 3 acres each	30	"
20 cows, with equal qualifications, at least 5 acres each -	100	"
25 breeding mares - at least 5 " each -	25	"
100 ewes - - at least 1½ " each -	150	"
20 goats - - at least 1 " each -	20	"

A *peonia*, then, exclusive of building lot, taking the fanega at

2 bushels, is - - - - - - - - -	655	"
" " taking it at 3 bushels, is	815	"
" " taking it at 3½ bushels, is	895	"
" " taking it at 6 bushels, is	1,295	"

A caballaria being five times the peonia, in addition to building lot,

is, for the lowest estimate - - - - - -	3,275	acres,
for the second estimate - - - - - -	4,075	"
for the third estimate - - - - - -	4,475	"
for the fourth estimate - - - - - -	6,475	"

be granted to a knight or gentleman; but one peonia to a laborer or soldier. By subsequent laws, about to be cited, it may be determined whether such limitation was intended, or, if intended, whether it has been continued.

An ordinance of Philip II, law 6, provides that the founder of a settlement, who shall establish upon it thirty families, shall receive therefor a grant of *four square leagues of land*, either in a square or lengthwise, according to the quality of the land.—2 Recop. 15. White's Comp. 34.

This grant to the founder is exclusive of the lands to the settlers; and the next law ordains, that, "If any one shall propose to contract for a settlement in the prescribed form, to consist of more or less than thirty *heads* of families, provided it be not *below ten*, he shall receive a grant of a proportionate quantity of land upon the same conditions."—Wh. Comp. 34. 2 Recop. 16.

The 9th law authorizes the founder or contractor for the settlement to allow to *each settler five peonias* or *three caballerias;* the expression is, that he shall not "grant more to each than five peonias or three caballerias," according to the express distinction, difference, and measurement, prescribed in the laws of the title concerning the distribution of lands, lots, and waters. *See* Law 1, the leading regulation of that title, recited above at length. *See*, also, 2 Recop. 16. Wh. Comp. 35.

Law 10th, the next in order, like the three former, belonging to title 5th, a title founded exclusively on ordinances of Philip II, and treating only of settlements, "de las poblaciones," warrants their establishment without a founder, "provided, among those who combine for the purpose, there shall be as many as ten married persons;" and to settlers un-

der such circumstances, lands are to be granted "proportioned to what is stipulated;" that is, as I understand, in quantity corresponding with previous general regulations. 2 Recop. 16. Wh. Comp. 35.

In law 4, title 12, regulating the distribution of lands, it is ordered, that, "in those parts of the Indies already discovered, where there are sites and districts sufficiently good to render it expedient to settle them, if any person should apply to form settlements therein, in order that they may do so with zeal and profit, the Viceroys and Presidents shall, in our name, grant them lots, lands, and waters, taking into consideration the situation of the land, provided it be not to the prejudice of third persons, and that said grants be for such period as we shall determine." 2 Recop. 40. Wh. Comp. 39.

In reference to the concluding and qualifying clause, "that said grants be for such period as we shall determine," it is sufficient to remark, that, so far as the determination of the Crown can be ascertained by general practice and the existing state of things, it has long been settled that grants of land should be in fee, either with or without condition, according to the nature of the case. In Florida, there are none but estates of inheritance; nor, so far as I can learn, is it customary, in any of the Spanish provinces, to grant less estates from the lands of the King.

Conforming to this law, Spanish grants usually contain the clause, "without prejudice to third persons," though without it, on general principles, the rights of third persons, older grantees, would be protected, where the intention of annulling previous grants did not appear.

This law is without express limitation as to the quantity of lands to be granted, but it is supposed that it must be governed by the qualifications contained in the preceding laws.

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As, by the laws examined on that subject, it was found that the provincial authorities in the Indies were not barely empowered, but that it was enjoined upon them to grant the lands of the Crown as *rewards* and *favors;* so, also, by these cited in reference to settlements, it distinctly appears that it is made their duty to grant and distribute them, in the King's name, for the purposes of settlement and population. And that here, though subject to no limitation in granting them as rewards, they are restrained to "five peonias or three caballerias" to each settler, and to the founder or contractor for the settlement to four square leagues, and in that proportion for every thirty families.

We perceive from these laws, connected as they are with the history of the period, that when the vast extent of the Indies began to be known, it became an earnest object of the Crown to distribute and people its lands. In no other way could the colonies be available to the mother country, either as to trade or the product of their mines. The lands, comparatively, were of no value but for distribution and settlement. Hence, after careful regulations in regard to settlements established under the charge of founders or contractors, laws soon follow, authorizing them to be made, with the right of electing civil officers by any company containing as many as ten married persons; and commanding, also, that lands shall be distributed, "where the sites are sufficiently good, to any person who may apply, to form settlements therein." That though, at an earlier period, discoveries were encouraged and rewarded, yet, in the reign of Philip II, such had been their accumulation, that, in his 32d and 33d ordinances, new discoveries were prohibited till those already made "should be peopled and permanently settled." That, subsequently to 1525, by an order of the Emperor Charles, settlers to whom lands had already been

granted, after they had occupied them four years, so as to secure the fee,* might obtain new lands, and so on, *ad infinitum*. That foreigners, by the edicts of Philip III, Philip IV, and Charles II, though not to engage in trade in the Indies, nor to be naturalized till after twenty years' residence, were permitted immediately to become owners of lands to an unlimited extent. And that, where a head chief should make new and authorized discoveries, and establish extensive settlements, he should be "rewarded for his diligence" with perpetual vassals and the title of Marquis.

2 Recop. 16, Law 10. Wh. Comp. 35.
" Ibid. 40, Law 4, Ib. 39.
" Ibid. 1, Law 1. Ib. 39.
" Ibid. 40, Law 2. Ib. 39.
3 Ibid. 333, Law 3. Ib. 48–9.
2 Ibid. 11, Law 23. Ib. 33.

These various regulations, evidently taking their character from the redundancy of the public lands an excess in Spanish America continuing to the present day, and naturally leading to free distributions, fortify, in connexion with the cause stated, the position, that, in the law of the Indies, no limit, but their own judgment and sense of duty, is prescribed to the provincial authorities, in granting lands as rewards, and warrant the conclusion, that the restrictions and distinctions, as to quantity, governing grants for settlement, were grounded, not on a desire to husband the lands, but chiefly with a prudential view, as frequently expressed, to the capacity of the settler to occupy, cultivate, and improve his grant.

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* It is here seen, that, in 1525, lands granted to the settlers in the Indies were held in fee simple. The same also appears in law 1, for the distribution of lands.

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I shall now proceed to the examination of such royal orders or regulations, issued since the compilation of the laws of the Indies, having connexion with the subject of inquiry, as have come to the knowledge of the Court.

1. The royal regulation of the 15th October, 1754, by Ferdinand VI, is first in date.

From the preamble to this ordinance, it appears that a royal order, issued by Philip V on the 24th November, 1735, made it necessary to perfect titles to lands granted in the Indies by a confirmation to be obtained from the Crown.*

That this requisition was productive of great injury, preventing altogether the confirmation of small grants, and subjecting those of larger amount to such expenses that "much land" was left altogether unoccupied, or, if occupied, by reason of defective title, not well cultivated, which otherwise, by grazing and proper culture, might have supported the provinces where it lay.

According to the purport and general tenor of this regulation, the necessity of confirmations from the Crown is clearly done away: I consider it expressly so by the first section.†

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* This royal order is not extant in Florida, and has not been seen by the Court. By it, the necessity of obtaining confirmations from the Crown existed not quite nineteen years; during this period only, so far as I can collect from the laws of the Indies, or from other regulations of the Crown, have such confirmations been required. The reasons assigned by Ferdinand for discontinuing this practice were manifestly sufficient to prevent its renewal.

† The clause in this section considered as expressly doing away the necessity of confirmations by the Crown, is the following: "By virtue of this law, my Council of the Indies, and its ministers, are excluded from the superintendence and management of this branch of the *royal hacienda*."

From this Council, where the King was supposed *always* to be present, his confirmations, whenever necessary, were issued. Taking away the jurisdiction as to the public lands would also end the granting of confirmations. 2 Rob. Am. 211-2.

By the first section, also, in addition to persons already authorized to grant lands in the Indies, *subdelegates* for that purpose may be appointed by Viceroys and Presidents of Audiencias; all of whom, whether so appointed, or in previous commission, may delegate their powers to others, for distant parts and provinces of their station, as was previously done. The second section recommends a mild and gentle course towards Indians and others in possession of lands, for the purposes of tillage or tending cattle, and forbids the exercise of severe strictness as to the lands in possession of Spaniards, or persons of other nations, in regard to the requirements of various enumerated laws of the Indies. The 12th section provides, that, in distant provinces, or where sea intervenes, confirmation of grants, or, in other words, titles to full property, may be made by the Governors thereof. Wh. Comp. 49, &c.

In this regulation, except rendering it no longer necessary to obtain confirmations from the Crown, directing the appointment of subdelegates to grant lands, and authorizing Governors in distant provinces to make perfect titles, I perceive nothing that can have an important bearing upon land titles in Florida. It is referred to by Ferdinand VII, in his order of the 8th of June, 1814, and is there recognised as in force. It contains nothing limiting the powers deduced from the laws of the Indies.—Clarke's Land Laws, 1010.

2. A royal ordinance of Charles III,* "for the establishment and instruction of Intendants of army and province in the kingdom of New Spain," provides, in the first article, that that empire be divided into twelve Intendancies;

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* This ordinance is found in a book "*de las ordinanzas de los Intendentes*," not in East Florida. The extracts given in White's Compilation are all that is possessed by the court, and all, it is said, of value to the question of land titles. The royal regulation of 1754 is found in this volume.

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that the territory belonging to each Intendancy bear the name of its capital city; that these Intendants reside within their respective capital cities; that they be persons of distinction for integrity and intelligence, and always appointed by the Crown.

The second article constitutes the Intendant General of Mexico superintendent of the royal treasury in all its branches, and declares the other several provincial Intendancies subordinate to the general Intendancy.

The 61st article, directing the culture of cochineal to be encouraged, authorizes the Intendants to grant lands to Indians or others, so far as it may be necessary for that purpose, to an unlimited extent.

The 81st article declares that the Intendants shall be the exclusive judges as to grants of lands; that persons applying for them shall lay their petitions before the Intendants, who, after advice or report upon investigation from the Fiscal, shall decide as to the grant.*—Wh. Comp. 54, 5, 6, 7, 8.

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* The 81st article makes the Intendants exclusive judges, also, concerning titles to or controversies about lands already granted. (a) The advisory, not obligatory, opinion of *asesores* (lawyers) may be taken, and an appeal granted to the *Superior Junta.* This right of appeal is not understood as extending to cases of new grants of lands; but, whether it do or not, could make no difference in the application of this law to the Intendant of Cuba, he being also Superintendent General, and subordinate, from the first establishment of his office, only to the Crown of the *Superior Junta de Hacienda,* mentioned in the 81st article; *he* is the *President:* an appeal, therefore, to that Junta, from his decision, granting or refusing lands, cannot in law be supposed. His authority on the subject was *final in America;* and such, I understand, has been the practice since the creation of the office by Charles III.

(a) A case in point occurred here in 1818 and 1819, before Coppinger, *Governor and Subdelegate,* respecting the Duke of Alagon's grant. The opinion *of Saavedra,* as *asesor,* was taken on that occasion *See Wh. Comp. from page* 242 *to* 258.

This ordinance, creating the offices of Intendant and Superintendent General, while it confers upon these officers the control of the royal treasury, and the power of granting public lands, presents no limit to the exercise of that power, and leaves it at least as extensive as it was found in the possession of the provincial authorities under the laws of the Indies.

3. The royal order or instruction of Charles IV, communicated to Governor Quesada of East Florida, by letter from *Luis de las Casas*, Captain General of Cuba, dated 29th October, 1790, so far as it is at all relevant, is in the following words:

"No settlers shall be admitted in Louisiana or Florida, "should they pretend to have their transportation to those pro- "vinces, and maintenance there, for some time paid by the "royal treasury. That those foreigners alone shall be receiv- "ed, who may, of their own free will, present themselves, and "swear allegiance to his Majesty, to whom there shall be "granted and measured lands gratis, in proportion to the work- "ing hands each family may have."—Clarke's Land Laws, 996.

The above order is noticed at the present time, it being often referred to in connexion with land titles in East Florida, merely to show that it does not restrain the general powers of granting lands possessed by the Spanish provincial authorities in America. Saavedra, in his letter to Coppinger, on the subject of land titles, after alluding to the special regulations of *Quesada* and *White*,* describing them as mere provincial

* The particular regulations of the Captain General O'Reilly, of Governor Gayoso, of the Intendant Morales, and of the Governors Quesada and White, in relation to the distribution of public lands, need only be read to prove that they are merely provincial. That they were founded on the

rules of their own, founded on existing local circumstances, and liable to be changed at pleasure, observes that Kindelan, when he came into command, "granted the land *without any restriction*, according to the royal order of the 29th November, (Oct.) * 1790."—White's Comp. 255–6.

Under this order, Quesada's rule was to grant headrights, and one thousand acres in addition.—Land Laws, 997. White's Comp. 245.

4. The royal order of the fourth of January, 1813, published by the *Cortes* during the absence and imprisonment of Ferdinand, decrees—

That, with a view to the public necessities, the welfare of the people, the promotion of agriculture and industry, and for the purpose, at the same time, of rewarding the deserving de-

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peculiar circumstances and supposed necessities of the provinces wherein they were adopted, and that their object was, subordinately to general law, to effect what at that time was deemed locally proper and expedient therein.

They established convenient rules for the officers who promulgated them, as well as for those under their command, in the discharge of their respective official duties—rules, however, liable to be suspended or changed at any time when it should be expedient, either by those in whom they originated, or by their successors in office.

In no instance do they prove or assert *any limit* prescribed by the Crown to the powers of the provincial authorities in granting the public lands. They only show that these authorities supposed themselves vested with, and exercised in this matter, discretionary, if not general powers, restricting or enlarging their grants, according to their own judgments as to what was suited to the wants and policy of their several districts.—White's Comp. 204,6,8—245, 6, 7. Clarke's Land Laws, 978, 9—981—997—1001.

* The order referred to by Saavedra, and by Governor Kindelan in his provincial regulation of the 20th November, 1790, was that communicated by the letter of the Captain General, bearing date the 29th October, 1790, and not the 29th November, which then would have been dated nine days subsequent to Kindelan's regulation founded upon it. Kindelan says, under date of the 29th of November, (it should have been October,) "last of this year," (pasado de *este* año,) and not, as translated and published in the Land Laws, 997, "29th of November of the last year."

fenders of the country, and providing a support for those who are not proprietors, *the public lands* shall be converted into *private property.*

The order directs the reservation of one moiety as a pledge for the payment of the national debt, and the remainder to be distributed, with some qualifications, in full property, either as rewards to the meritorious, or for the purposes of cultivation to those without lands.

No definite quantity, in any instance, for distribution, is specified by the Cortes. The motives set forth in the decree, and the free distribution enjoined, would not lead us to expect, in this order, a limitation of powers previously conferred.—Clarke's Land Laws, 1006.

5. The royal order of 1815, for the encouragement of trade in naval stores, &c., (See Wh. Comp. 239,) may warrant grants of land for that purpose. The point could be more readily determined, if the measures recommended to, and approved by, the King, had been expressed. This order has no intimate connexion with the present question.

6. The royal order of the 29th March, 1815. This order is merely a notice "that his Majesty approves the gifts" recommended by Governor Kindelan, in favor of the officers and soldiers of the militia, and of the third battalion of Cuba, for their fidelity, manifested in defending the province of East Florida against the then recent rebellion. It concludes with the expression of a desire of the King to be informed as to the rewards which ought to be conferred upon the late *pro tem.* Governor Estrada, and upon several other persons belonging to the army, who had served in East Florida during, or at the commencement of, the rebellion.

An extract from the recommendatory letter of Kindelan, is as follows:

"I cannot but recommend to your Excellency the fidelity manifested by the militia, and third battalion of Cuba, for which I consider them worthy the gifts to which the supreme Governor may think them entitled; taking the liberty of recommending the granting of some which may be as follows: To each officer who has been in actual service in said militia a royal commission, (equal to his rank in the militia,) and to the soldiers a certain quantity of lands, as *established* by regulations in this province, agreeably to the number of persons composing each family, and which gifts can also be *extensively** made to the married officers and soldiers of the said third battalion.—Wh. Comp. 247–8. Clarke's Land Laws, 1009.

Governor Kindelan, in this letter, as to the distribution of public lands, recommends the doing of that, which, subordinately to the laws of the Indies, it seems he possessed the

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* It has been demonstrated that '*extensively*,' as used above, is the true word—a copy of the original letter having been furnished to the American Government from Madrid. In this copy, as well as in that among the archives here, the word is *extensiva*, not *exclusiva*. This may be unimportant; but the letter, in this particular, has been incorrectly published among the State Papers, in Clarke's Land Laws, and in White's Compilation, and it is proper to correct the mistake.—(See State Papers, doc. 158, p. 29. Land Laws, 1034. 6 Wh. Comp. 248.)

As, with regard to this letter, a charge of fraudulent erasure has been published, and imputations, also, sometimes official, that the Spanish inhabitants are unwilling to disclose the truth as to the general question of land titles in Florida, I deem it but justice to say, as judge, that, where testimony has been exhibited before me, and on the many occasions wherein I have sought from the intelligent information on the subject, it has been given with commendable candor, and with entire freedom. I have found no cause for doubting the fidelity of their statements; and their ideas and opinions have been such as were evidently entertained in Spanish times, not formed to meet present exigencies.

power of doing, if in his discretion he had thought fit, without consulting the Captain General of Cuba.

But it was a military measure, and natural and respectful to seek the advice of his military superior in a *discretionary* matter, leaving to *him* to decide its expediency, even though he (Kindelan) might have taken the step on his own responsibility. The letter imports nothing more, and the Governor says, that, while the idea of public approbation and military rewards will produce the best effects, "nothing in reality will be given."

7. The royal order of the 3d September, 1817, to the Intendant and Superintendent, General Ramirez.

"His Majesty, understanding by letters of your Lordship of the 14th and 18th of August and 21st October last past, Nos. 18, 28, and 107, of the resolutions concluded with the Captain General of that island, to regulate all that appertains to the branch of the royal finance, and to attend to the protection and advancement of the two Floridas, and having confirmed himself with the advice given by the Supreme Council of the Indies, in their deliberations held on the 11th of August last, his Majesty has been pleased to approve, for the present, all which has been done with respect to the regulations of said branch, as, also, the supplies administered by the Board of Royal Finance for the payment of the regiment of Louisana, and other indispensable expenditures for the fortifications and defence of the cities of St. Augustine and Pensacola; authorizing your Lordship, in case of necessity, to aid or supply them. His Majesty, likewise, has determined, for the present, the *superintendency* of the two Floridas in favor of your Lordship as Superintendent of the Island of Cuba; and, lastly, his Majesty has been pleased to command me to inform your Lordship, as I now do, *that you facilitate*

the *increase* of the *population* of *those provinces*, by *all the means* which *your prudence* or *zeal can dictate;* informing, &c.

"All which I communicate to your Lordship by royal order, for your intelligence and compliance therewith," &c.

"GARAY."

(Clarke's Land Laws, 1011.)

For the better understanding of the above order, it may be well to state, that a question had been raised between the previous Intendant and Apadaca, the previous Captain General of Cuba, as to which of these two authorities appertained the superintendency of the royal domain of the two Floridas. Soon after the appointment of Ramirez, the question was investigated, the laws and ordinances examined, and the mutual accord and agreement of Cienfuegos, the Captain General, and Ramirez, the Intendant, dated the 9th of August, 1816, touching this matter, stipulated and recorded.

In this accord it was decided and agreed, that to the Intendant belonged the control and jurisdiction of the royal domain of the two Floridas, and that by him it should be exercised, till the King's pleasure, to whom the accord had been submitted, should be made known.—Wh. Comp. 157, 8, 9.

This agreement was duly transmitted to the Governor of East Florida, with the Intendant's letter, bearing date, Havana, 26th August, 1816.

"I enclose to your Excellency, for information, proof, and compliance by that subdelegation, and officers of the royal domain, where should appear in the corresponding form a certified copy of the agreement, which, on the 9th instant, I made with the most Excellent Lord Don Jose Cienfuegos,

Captain General of this island and of the two Floridas, suspending the proceeding commenced in the time of the Most Excellent Lord, his predecessor and mine, on the ques ion to which of the two authorities belongs the superintendency of the royal domain of said two Floridas, and determining that, until his Majesty shall otherwise resolve, both possessions depend on this Intendancy of the army, to which is annexed the same subdelegated superintendency general of the royal domain of this island, in all matters and incidents which may offer in this department, as specified in said agreement. And I charge your Excellency to be pleased to give us, by the first opportunity, competent advice of the receipt and consequent dispositions."

"May God preserve your Excellency many years.

"ALEXANDRO RAMIREZ.

"*To his Excellency the Governor, Subdelegate of the Royal Domain, St. Augustine, East Florida.*"

(Wh. Comp. 157.)

It is seen that this decision of the Intendant and the Captain General was approved and confirmed by the King in the royal order of the 3d Sept. 1817, above recited.

We have now gone through with the regulations and orders of the Crown, down to the point of time at which the grant under consideration was made. In them nothing has been discovered to contradict the deductions stated from the law of the Indies, or to lessen the confidence of the court in their correctness. On the other hand, such is their general character, the urgency exhibited, and the anxiety displayed for the distribution of the public lands, and the population of the provinces, that by them these deductions are corroborated and sustained. And we are warranted in saying, as the court be-

lieves, by the orders and regulations of the Crown, as well as by the laws of the Indies, that the provincial authorities were empowered, within their respective districts or provinces, to grant the public lands as *rewards*, without other limit *as to quantity* than that which, to their own judgments' discretion and fidelity, should seem fit. But that, in granting them for the purposes of settlement and population, they were not permitted to exceed five peonias or three *caballerias* to *each settler*, with the addition to the contractor for the settlement of 4 square leagues of land for every thirty families, and in that proportion for a greater or less number.

This, then, in 1817, was the limitation or rule in granting lands for the purposes of settlement, unless the order of the third of September of that year shall be considered as specially excepting the Intendant Ramirez, in regard to the domain of the two Floridas, from its operation.

Charging him with the superintendency of the royal domain of the Floridas, and commanding him to facilitate the increase of the population thereof by *all the means* which his *prudence* or his *zeal* could suggest, might perhaps justly be taken as a general authority to grant lands for settlement—an ordinary and legitimate mode of effecting the desired object, free from the usual, indeed free from any restriction as to quantity. However this may be, it is unnecessary in this case to pursue the inquiry, because, in the opinion of the court, the grant of Ramirez to the Arredondos is far within the general limitation.

We have seen to what extent the provincial authorities of the Indies are empowered to grant lands. We have seen, also, that, by the royal regulation of 1754, *Subdelegates* were to be appointed to grant lands *in full property*, the temporary necessity of confirmation from the Crown having

by that order been done away: that, by the ordinance of Charles III, for the establishment and instruction of Intendants, *Intendants* and *Superintendants* were charged, within their respective limits, with the care of all that appertains to the royal treasury, with the control of the royal domain, and with the power of granting therefrom the public lands: and the question now is, whether *Alexandro Ramirez*, in whom was concentrated the offices of *Intendant*, of *Subdelegate* and *Superintendent General* of the royal domain of the island of Cuba and of the two Floridas, was a "lawful authority of his Catholic Majesty," for the purpose of granting the public lands, and whether, by virtue of his general official powers, and the superadded obligations of the royal order of 1817, he could have made this particular grant to the Arredondos.*

The views of the court upon this question may be collected from what has already been expressed. Ramirez, possessing the general powers described and stated above—knowing well the critical situation of the province of East Florida, and the dangerous vicinity to which it was exposed, receives from his King an order giving him in special charge the care of the public lands of the royal domain therein, and emphatically commanding him to employ every means which his

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* The following letter shows the style of office of the Intendant Ramirez, as well as the date of his commission:

HAVANA, 3d July, 1816.

The King our master having been pleased to confer on Senior Don Alexandro Ramirez, by a royal commission of the 5th October of the year last past, the posts of Intendant of the Army, Superintendent General, Subdelegate of the Royal Domain, he has this day taken possession of them, and I advise, &c.

JOSE DE FUERTES.

To His Exc. Subdelegate of the Royal Domain, St. Augustine, E. Florida.

prudence or zeal could suggest to *increase the population* of the province.

Under such circumstances, agreeably to the ordinance of Charles III, a memorial is laid before him by the Arredondos, praying for the grant in Alachua; a point at which, if this country had continued in possession of Spain, a powerful settlement would more effectually have secured its quiet and peace, than at any other throughout the whole territory. Agreeably, again, to regulations, the memorial, with the terms proposed, and the question as to the propriety of making the grant, is referred to the Surveyor General of the two Floridas, and to the *Promotor Fiscal de Real Hacienda*, or Attorney General of the Royal Domain, with instructions to these officers to report in the premises. The Surveyor General reports that the lands solicited belong to the royal domain, are vacant and uninhabited: the Attorney General makes, substantially, the same report; and both advise the making of the grant.

The grant is thereupon made in due form, with the usual reservation of the rights of Indians and all third persons, and subject to the condition of settlement which has been stated.

The grant is for 289,000 acres of land, upon which Arredondo contracts to establish two hundred families. I will not delay the inquiry by setting down a calculation, showing how very far short this quantity would fall of a supply of lands for two hundred families, either upon Quesada's rule, or upon the principle which admits 5 *peonias* or 3 *caballerias* to each settler. Reducing the contents of the peonia much beneath its lowest estimate, and supposing an almost uncivil parcity of *caballeros*, still the settlers might exhaust the tract, leaving nothing for the *contractor*, the *founder*, *Arredondo*.

The grant, then, in principle and law, is no more objectionable, if the reasoning of the court be correct, than if it had been of a much smaller quantity; and this is true without taking into consideration the fact within the knowledge of the court, and partially shown in Searcy's map, that such is the extent of lakes and ponds upon this tract that its actual contents, clear of water, probably do not exceed 200,000 acres.

With the power of granting lands, and with the knowledge that the royal domain, from the very discovery of America, had been uniformly appropriated to the increase of population by gratuitous distribution, it may be asked what more natural or legitimate means could have been used by Ramirez to increase the popuation of East Florida, than the gratuitous granting of her public lands? In truth, this was the course familiar to the laws and the history of the Indies, and, we cannot but suppose, to the mind of the King, or of his ministers, when the order to Ramirez was issued.

In the impoverished state of the treasury, money he had not: no other means have been suggested—none, I believe, can be—than those to which he did resort. If these were not legitimate, then the order itself was a mere dead letter. But Ramirez, a learned and distinguished officer, of high and responsible public trust, evinced his own sense of its import, and of the authority he possessed under it, and under the existing regulations and laws, by making the grant.

The Attorney and Surveyor General gave the same pledge, and the same testimony, by advising it.

The grant made to a family at that time esteemed more wealthy and more influential than any other in the province, and the point, Alachua, selected for the settlement, establish the measure as one of great discretion and probable efficiency.

The Court is of opinion, for the reasons stated, that the Intendant and Superintendent, General Ramirez, was officially empowered to make the grant of the Alachua tract to the Arredondos, in manner and form as it was made on the 22d day of December, 1817.

In the examination of the laws of the Indies, and of the subsequent regulations of the Crown, the "practice and usages of the provincial authorities, and the policy of the mother country," have been incidentally noticed. A brief attention to them now is all that is required: were not the general question one of great interest and solicitude, not to the claimants only, but to the United States, as lovers of justice, it might be left to the deductions already presented.

But any opinion founded on the laws and regulations of Spain, especially touching matters of national policy and the powers of her public functionaries, may well be tested by an appeal to her history.

If there we find that policy explained, and the powers in question uniformly exercised, as asserted in the opinion, we may assuredly rest upon it with confidence.

Commencing, then, with West Florida, we notice the grant to Carera; the two grants on the Appalachicola to the house of Panton, Leslie, & Co., of great extent, *granted*, *ratified*, and *confirmed*, in full property, by the Governor and Subdelegate, Vincente Folch, in the name of the King, and, as he declares, in 1806 and 1811, by virtue of full official powers.

In East Florida, the Governors, from 1790, when, subsequent to British occupation, the first grants were made, have constantly exercised the power; and throughout this district, all titles to land, all property in real estate, *rest* exclusively on this original foundation. Here, no grants, saving those to Alagon, Vargas, and Punon Rostro, have been either made or con-

firmed by the Crown, except through the medium of the delegated power of its provincial authorities.*

Throughout the islands of Cuba and Porto Rico, the country is spotted with large grants, made in early as well as in recent

* During the administration of Zespedez, the first Governor after the recession of the province from Great Britain, no grants were made. But his application to Count de Galvez, on the 8th of May, 1785, for authority to distribute lands, not only to the old inhabitants of East Florida, to the Minorcans, and to Spaniards from abroad, *but to foreigners generally*, does not fairly warrant an inference, as has been asserted, that Zespedez did not well understand that the general right of granting public lands was possessed by the provincial authorities in Spanish America. Much less does it tend to prove that they did not possess such power.

Those who argue differently on this point overlook the fact that the province had just come into the possession of Spain; that ten months had not elapsed since its command was first assumed by Zespedez; that no instructions, as appears, had been furnished to him; and that a system of measures and of policy was yet to be adopted for the new Government. In this view, it is easy to perceive that prudence and discretion would have dictated the very course pursued—that Zespedez should have sought direction and instruction from his superior; and, that to adopt and commence so broad a policy as the distribution of the public lands, not merely to the inhabitants of the province, but to *foreigners generally*, for the purpose of attracting them from every quarter of the world, without the advice or approbation of those in authority above him, though the abstract and positive right might be conceded, would have been arrogant and rash in the extreme. It was a system of policy for the new province that he proposed; and well might he have left to his superiors, as he did, the responsibility of its adoption. The same caution is exhibited by his successor, Quesada, who, on the 2d September, 1790, shortly after he came into command, declares, that, though by the *Laws of the Indies*, he is authorized to make distributions of lands absolutely, yet, from powerful motives, he will abstain therefrom.

The *right* of the Governors was one thing; the discretion or propriety of exercising it on any particular occasion, another, and, as might be, a very different thing. And this distinction presents a satisfactory explanation, both as to the application by Zespedez and the declaration by Quesada, and forbids that either should be alleged as an argument against the general power of granting the public lands by the provincial authorities of Spanish America—a power having for its sanction the uniform practice of the Indies ever since the discovery of the New World, and the uninterrupted approbation of the Crown during the same period.—11 vol. State Papers, Doc. 158, pp. 18, 19, 20. Clarke's Land Laws, 1038.

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times, by the provincial authorities, and extending leagues to each wind.

In Louisiana, in Mexico, in the provinces of South America, wherever the lands were of sufficient value to invite occupation, and where, at the same time, it was deemed an expedient local policy to distribute them, similar grants have been made by similar authority.

The *encomiendas*, large tracts or districts of lands, with the Indians upon them, held, at first, merely for life, as the reward of personal merit, but soon converted into estates of limited inheritance, (mayorazgos,) and finally of full property, were granted by express authority of the laws, in the same way.

In Peru, Gasca, whose character for moderation and correct administration of his government has the strongest testimony of history in its favor, granted lands to all whom he thought deserving. In 1548, his grants were numerous, and many of them extensive, especially those to Cepeda and Hinojosa.

It was a power commencing with Columbus, in 1499, by the free distribution of the lands of Hispaniola, even those of his terrestial paradise, the *Vega Real*, to Roldan and his followers; and has been continued and exercised to the present day by the provincial authorities who have succeeded him, throughout the Indies.—2 Rob. Am. 136, 139, 140, 103, 104. 1 Rob. Am. 124. 1 Irv. Col. 367–9. 2 Ibid, 273, 2.

The general policy of Spain has not been to make the lands of the Indies a source of revenue: occasionally it has been attempted in a few districts, but always ineffectually. Her chief objects have been the produce of the mines, and the advancement of the trade of the mother country: for the latter purpose, while staples, not the growth of Spain, have been encouraged by

the free distribution of public lands, the culture of the vine and the olive has been absolutely prohibited, except in those remote regions, to which the only access was by the Pacific.—2 Rob. Am. 214.

With such views, the lands could not have been held of much abstract value. It was by their distribution that the national objects were to be accomplished; and they were of such extent, that the grasp of no people, dividing them into moderate estates, could compass them. Hence, it is not strange that those who held them in charge, under the Crown, with authority to distribute them as rewards, and for the purposes of settlement and population, should often have discharged that duty by conferring large grants; or that the Crown, during the lapse of more than three centuries, should uniformly have sanctioned them, either expressly or by its acquiescence.

This course has not been peculiar to Spain: every European State holding possessions in America has necessarily adopted and pursued a like policy.*

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* The following extract is from a speech of Mr. Senator Hayne, delivered in Congress on the 19th January last. I may be excused in adopting it, on this occasion, as a happy illustration of that policy which I have been attempting to describe. Mr. Hayne, after commenting on the existing land system of the United States, said that—

"In this respect, a marked difference is observable between our policy and that of every nation that has ever attempted to establish colonies or create new States. Without pausing to examine the course pursued at early periods in the history of the world, I will come directly to the measures adopted in the first settlement of the new world, and will confine my observations entirely to North America. The English, the French, and the Spaniards, have successfully planted their colonies here, and have all adopted the same policy, which, from the beginning of the world, had always been found necessary in the settlement of new countries, viz: a free grant of lands, "*without money* and *without price.*" We all know that the British colonists, at their first settlement here, whether deriving

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From every source, then, reasons are derived, confirming the opinion advanced. The policy of Spain; that of the other States of Europe, who have had, or now have American colonies; the laws of the Indies, the orders and regulations of the Crown, and the uniform practices and usages of the provincial authorities, sanctioned by the equally uniform acquiescence of her Kings; all tend to the same point, warranting the conclusion formed, and presenting as satisfactory evidence as can be found perhaps in any case, to sustain or justify a legal opinion.

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title directly from the crown, or from the lords proprietors, received grants for considerations *merely nominal.*

"The payment of a "penny" or a "pepper-corn" was the stipulated price which our fathers all along the coast, now composing the old thirteen States, paid for their lands. And even where conditions seemingly more substantial were annexed to the grant, such, for instance, as settlement and cultivation, these were considered as substantially complied with by cutting down a few trees, and erecting a log cabin, the work of only a few days. Even these conditions very soon came to be considered as merely nominal, and were never required to be performed in order to vest in the grantee the fee simple of the soil.

"Such was the system under which this country was originally settled, and under which the old thirteen colonies flourished and grew up to that early and vigorous manhood which enabled them in a few years to achieve their independence.

"Now, what, let us inquire, was the reason which has induced *all nations* to adopt *this system* in the settlement of new countries? Can it be any other than this, that it affords the only certain means of building up in a wilderness great and prosperous communities? Was not that policy founded on the universal belief that the conquest of a new country, the driving out '*the savage beasts, and still more savage men,*' cutting down and subduing the forest, and encountering all the hardships and privations necessarily incident to the conversion of the wilderness into cultivated fields, was worth the fee simple of the soil? And was it not believed that the mother country found ample remuneration for the value of the lands so granted in the addition to her power, and the new sources of commerce and of wealth furnished by prosperous States?"

If a different principle could be adopted, and, in the administration of civil justice, extended not to Florida only, but through the Spanish provinces generally; if it could be asserted, and the assertion made a rule of decision, that the provincial authorities were not and had not been vested with power to grant lands, as stated, it would vacate the titles of a vast proportion of the landed estates of Spanish America.

But this cannot be permitted: a court of justice has no judicial right to disregard the settled usages of a nation, or to overturn a fundamental principle on which the property of its subjects or citizens rests.—8 Wheat. 591–2.

The second objection, "*that the grant was within the Indian boundary, and therefore void,*" will now be considered.

If the law were so that the grant would be void if the lands lay within a well established Indian boundary, yet the difficulty is presented at the very threshold in this case, that the existence of such boundary has not been satisfactorily proved.

The witnesses, Summerall, Worthington, Knight, and Ward, testify that they have heard of, and always understood that there was an Indian boundary: they heard it, not from Spaniards, but from the bordermen or *patriots*, chiefly from Georgia, living on the other side of the St. John's, and upon the St. Mary's—a class of people held by the Spanish authorities as absolute outlaws. To this corps of patriots the witnesses themselves belonged—Worthington having also been, at the time he acquired his information, an enlisted soldier of the United States' army. Neither of them could speak a word of Spanish, or understood, as to the supposed boundary, how it came, or by whom it was established.

Under such circumstances, the general impressions of these witnesses, derived from the sources mentioned, cannot justly

be considered as evidence to establish an obligatory boundary between the Spanish Government and the Indies.

Knight also states, that, in 1809, Governor White, in his presence, refused to make a grant of lands to one Oliver, south of Black creek and west of the St. John's, because it was within the Indian boundary; and Daniel Hurlbert, in his testimony, says, that the same Governor, in 1808, refused him and Bushnell permission to cut cedar within the same limit, saying "it was within the Indian boundary, and *without his jurisdiction*," pointing it out to him, at the same time, upon a map in his office, and stating that it was the same as in British times.

If the testimony of Knight and Hurlbert stood alone, and without explanation, it might be received as proof that Governor White, on the occasion stated, had recognised the alleged boundary; but, taken literally, it goes too far. Who can suppose that Governor White would have declared his jurisdiction over the province of East Florida was limited to that small section of country lying north and east of a line drawn from the vicinity of Musquito to the St. John's, and thence northwardly from the mouth of the Ock-la-wa-ha, by the junction of the forks of Black creek—to the St. Mary's the line agreed upon in 1765 by the Creek Indians and Governor Grant, and the only Indian line ever heard of in East Florida. Without at all discrediting the intentions of these witnesses to testify truly, according to their recollection of the facts which they state, I am convinced that they have been mistaken in the particulars.

If the Governor had declared, as it is probable he did, that the cedar and the land being in the neighborhood, or within the hunting grounds of the Indians, it was inexpedient or

against rule to grant the one, or permit the other to be cut, how easy and natural it may have been for these witnesses, after a lapse of twenty years, when the boundary had become a topic of conversation and earnest inquiry, to misrecollect these declarations, to confound them with the question of boundary, and to testify to them, as the admission of the Governor that such boundary existed, and that he was governed by it?

In this way their testimony may be considered as explained by George Clarke, and reconcilable to that of the other witnesses.

To show the existence of an Indian boundary at any period in Spanish times, the above is all that is before me. The statements of Hall and Fatio only tend to prove that a boundary was agreed upon in British times—a fact better shown by the arrangement itself, already mentioned as made by Governor Grant in 1765, and found in White's Compilation, page 266–7.

Under this head, too, the letter of Governor *Estrada* to the *Marquis de Someruelos* has been read. It is believed that he wisely opposed the grant to Gios; but his argument, by way of objection, that while Spain or Britain possesses the sovereignty of an American province, the Indians are the owners, and have the property of the soil, and that lands *cannot be granted* till they have been first purchased from the Indians, must have been advanced without due reflection, being sustained neither by the principles or practice of his own Government, nor by those of Great Britain. It may be observed in this letter, that, while Estrada urges his unsound but kind doctrine as to Indian rights, he neither speaks of nor alludes to a boundary, but, as will be seen by and by, was him-

self in the free practice of granting lands within the one alleged.—Wh. Comp. 233–4.

On the other hand, the testimony of Hernandez, Clarke, and Alvarez, intelligent native Spanish inhabitants, furnishes, as appears to me, conclusive evidence that no Indian boundary was ever known to the people, or recognised by the Spanish Government of East Florida.

Hernandez states, that, during the existence of the Spanish Government in Florida, "he never heard of any boundary between the Indians and that Government;" *Clarke*, "that he was Surveyor General of this province, which office he held from 1811 till the exchange of flags; had instructions for the regulation of his conduct in office, but they made no reference to any Indian boundary separating their lands from the lands of the whites, or to any Indian boundary of any description. He never received from any Governor, or from any public officer, any instructions recognising or counting upon the existence of any such boundary; he never heard of any such boundary till the exchange of flags, except, about thirty years ago, he heard an Indian trader say something of an Indian boundary established anterior to 1784, in British times, which he (the trader) supposed regulated the Spanish Government. That he then made inquiry whether there was any such boundary of various officers of Government, and especially of Zubezeretta, the Escribano, and was always informed there was no line of demarcation between the Spaniards and the Indians, which governed, whatever might have been in British times."

"That, previous to 1817, the Government was certainly reluctant to make grant west of the St. John's river, from a desire not to bring the people in too close contact with the In-

dians; and, for the same reason, the people were not inclined to ask for grants there. But the Indians having left the country in 1812 or '13, and the marauding parties from Georgia having ceased in 1817, the Government at that time made grants of lands to people in that country when they wished; and witness himself, in 1817, '18, and '19, located many grants there for grantees, which had been previously made in other places."

Alvarez testifies, that he was many years a clerk in the Government office, where concessions of lands were made, and where the Governor transacted all but his judicial duties. He commenced as clerk in 1807, and, with two short intervals, having been appointed principal secretary by the King in 1815, continued in the office till the exchange of flags. He states that no map, document, or treaty was in the office, or belonged to it, at any time, pointing out or recognising an Indian boundary. That, if such document had existed, the office of which he was the clerk or secretary was the place for it. That he never heard of such boundary, or even of the treaty entered into by the English and the Indians at Picolata, till since the exchange of flags. That he is now keeper of the public archives, and that no such treaty, or other instrument, setting forth an Indian boundary, is to be found there.

It may be deemed superfluous, after the foregoing testimony, to present the document in the annexed note; but the nature of the case warrants it—the document demonstrating, by the official acts of each of the Governors, commencing with *Quesada*, appointed in 1790, that not one of them, *White* and *Estrada* included, has been governed by the supposed boundary, but that all, like the Provincial Junta of Cuba, under the

regency of the Cortes and the Superintendent Ramirez, have freely granted lands within it.*

The question of occupancy seems naturally to follow that of boundary; and on this point it should be recollected that the grant itself, based on the reports of the Fiscal and the Surveyor General, substantially declares that the lands granted are vacant and uninhabited. This, perhaps, ought to be conclusive *against the Government* in any controversy respecting it. But Summerall, Worthington, Knight, Ward, Hall, Hernandez, Clarke, and Alvarez, all who have testified in regard

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* *Grants of lands made by the Spanish authorities in East Florida, within the supposed Indian boundary.*

BY GOVERNOR QUESADA.

Date.	*Grantees.*	*Location.*	*Acres.*
5th Nov. 1795,	John McQueen,	Miami river - - -	2,000

BY GOVERNOR WHITE.

18th May, 1803,	John H. McIntosh,	Manati island in Indian river, Indian river, - -	7,300
28th Ap. 1804,	Gardiner Backer,	Miami river, - - -	550
2d May, 1804,	William Brew,	Miami river, - - -	150
25th Aug. 1804,	James Carson,	Santa Lucia, - - -	900
6th June, 1806,	Moses Cartan,	Miami river, - - -	50
28th Ap. 1806,	Samuel Davis,	Willsborough river, south of Jove's lake, - -	185
27th Feb. 1808,	John Egans,	Sweet Water river, north of cape Florida, - -	100
18th Jan. 1805,	Pedro Fornello,	Key Biscayn - - -	175
23d Aug. 1803,	James Hutchinson,	South of Indian river, -	2,000
14th Ap. 1807,	Same, - -	Jupiter's island.	
28th Ap. 1804,	Richard Richardson	Miami river, - - -	365
5th Jan. 1805,	Edward Lyon,	South of Indian river, -	265
26th Ap. 1804,	James Samson,	Wiam river, opposite Key Biscayn, - - -	800
5th May, 1804,	Same, and G. Baker,	Miami river, - - -	10
28th Ap. 1804,	Samuel Sargent,	Miami river, - - -	810
28th Ap. 1803,	Thomas Wilson,	Miami river, - - -	275
5th Ap. 1804,	John Hooper,	South of cape Canaveral, -	150
29th Aug. 1803,	George Taylor,	Indian river, - - -	5,000
26th Nov. 1810,	Peter Miranda,	Tampa Bay, - 8 leagues square	

to it, concur in rendering it certain that the Alachua Indians, after the repeated inroads made upon them from the frontier of Georgia, about the year 1814, entirely abandoned the district, and have never to this day returned to these granted lands, for the purpose of re-occupation.

BY GOVERNOR ESTRADA.

Date.	*Grantees.*	*Location.*	*Acres.*
14th Dec. 1815,	Francis Medices,	Okiliwaha river,	2,000
26th Aug. 1811,	John P. Satar,	Key West.	
18th Dec. 1815,	Francis R. Sanchez,	Santa Fé river,	4,000
20th Nov. 1815,	Peter Furhar,	Indian river,	1,500
16th July, 1815,	E. M. Gomez,	St. Lucia and Jupiter island,	12,000
12th Dec. 1815,	John Percheman,	Okiliwaha river,	2,000
18th Oct. 1815,	Miguel Marcos,	South of Long lake, west of the St. John's,	5,500

BY GOVERNOR KINDELAN.

6th Dec. 1814,	Bernado Segui,	Indian river,	5 miles square
5th Jan. 1814,	Francis Ferreyra,	Key Bacas.	
23d May, 1815,	Nicholas Estefanoply,	Suwanee river,	2,500

BY GOVERNOR COPPINGER.

27th Feb. 1818,	Charles Jones,	St. Lucia and Indian river,	2,040
26th Feb. 1818,	Jos. F. Rattenburg,	Jupiter island, Indian river, and lake George,	2,600
26th Feb. 1818,	Same,	Indian river, Key Large, &c.	50,000
12th Jan. 1818,	Joseph S. Sanchez,	Santa Fé river,	2,000
3d April, 1818,	John Sanchez,	Indian river,	500
24th Jan. 1818,	Francisco Lozano,	Indian river,	500
10th Jan. 1818,	Francis Richard,	West of lake George,	1,025
20th Mar. 1817,	Jos. M. Arredondo,	Big Hammock and Alligator creek,	20,000
24th Mar. 1817,	F. M. Arredondo & Son	S. and W. of lake George,	30,000
24th Mar. 1817,	Same,	Alligator creek,	38,000
29th May, 1817,	Thomas de Aguilar,	Encinal grande, west of the St. John's,	2,000
22d May, 1817,	Antonio Alvarez,	Encinal grande, west of the St. John's,	1,500
18th Feb. 1818,	John Andrew,	Indian river,	300
8th May, 1818,	Thomas Backhouse,	Indian river,	500
17th Dec. 1817,	George J. F. Clarke,	Kuscowillo, Chachala, Yalahassa, Alachua,	26,000
3d May, 1816,	Same,	Spring Grove, W. of L. Geo.	1,000
9th Sep. 1816,	George Flemming,	Indian river,	20,000

The testimony of the witnesses who belonged to the patriot parties, is impressive. They state that they made their incursions into the Alachua to take and drive away the Indian cattle, their practice being to shoot and kill the Indians whereever they could find them; that Payne and his people, living in several villages upon the Alachua grant, were nearly all destroyed; that they burnt the villages, and destroyed all Indian property wherever it could be found, except cattle that were worth driving away; but that of these, many had already been destroyed by the Indians themselves, who per-

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15th Sep. 1817,	Antonio Huertas,	- 12 miles S. of L. George, west of St. John's, -	15,000
31st May, 1817,	Catalina Hijuelos,	Encinal grande, w. St. John's	2,000
16th Sep. 1817,	Peter Miranda,	- S. of lake George, west of St. John's, - - -	10,000
26th Jan. 1818,	Mathias Martinez,	- Encinal grande, west of St. John's, - - -	1,000
9th April, 1818,	Lewis Mattair,	- Indian river, - - -	500
24th Dec. 1817,	G. W. Perpall,	- Encinal grande, west of St. John's, - - -	660
14th Oct. 1817,	Pablo Rosete,	- Indian river, - - -	2,000
1st June, 1818,	Joseph B. Reyes,	- Okiliwaha river, - -	1,000
3d April, 1818,	F. P. Sanchez,	- Indian river, - - -	1,000
6th April, 1818,	Joaquin Sanchez,	- Jupiter Island, - -	500
10th June, 1816,	Charles W. Clarke,	Chachala, Alachua, - -	4,000
11th Feb. 1817,	Philip R. Younge,	- Long and Second lakes, west of St. John's, -	25,000

BY THE PROVINCIAL BOARD OF THE ISLAND OF CUBA AND BOTH FLORIDAS.

4th Dec. 1813, John C. Arrambide, N. of Miami river, 2 lea. to each wind.

BY THE SUPERINTENDENT OF THE ROYAL DOMAIN OF CUBA AND THE TWO FLORIDAS.

22d Dec. 1817, F. M. Arredondo & Son, Alchua, 4 lea. to each wind.

I, Antonio Alvarez, Keeper of the Public Archives of East Florida, do hereby certify that the originals of the abovenamed grants o land are on file in my office, with the exception of the two last, which are authenticated copies.

Witness my hand and seal of office, at the city of St. Augustine, Territo-
[L. S.] ry of Florida, this 6th day of October, A. D. 1830.

ANTONIO ALVAREZ, *K. of the P. A.*

ceived that the attacks of the whites were caused by a desire to possess them, and who hoped, that, by thus voluntarily impoverishing themselves, they might be spared in future. But the remnant of this people was finally compelled to seek a more remote position; and the country about the Alachua savannah, the cattle having entirely disappeared, became, during the year 1817, and perhaps previously thereto, comparatively quiet. This is the sum of the testimony of all the witnesses, and is a part of the well known history of the province.*

There is, then, in the opinion of the Court, a failure to establish either the existence of the Indian boundary, or a particular occupation by the Indians, either *actual* or *intended,* of the lands granted.

It will be found, however, that neither the Indian boundary, nor that kind of occupation held by Indians in their native state, agreeably to the laws of Spain or the usages of the Crown, could be alleged against the validity of a grant of her public lands.

On this subject, I will first observe that it has always been a fundamental maxim of Spanish jurisprudence, with respect to America, to consider all lands discovered there as vesting in and belonging to the Crown.

In 1493, on the return of Columbus from his first voyage of discovery, Alexander VI issued his papal decree, ceding to the Spanish sovereigns, Ferdinand and Isabella, and to their successors, full, exclusive, and perfect title to all in-

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* Whether *Micanope,* and his "*sense carrier*" Jumper, mentioned by Rutan, as warning him, through the negro Abram, against settling on the Alachua lands, were among the occupants there "*en otro tiempo,*" and "*natives of the soil,*" does not appear. Nor does it appear from the testimony of Miranda, or of Alvarez, whether those who held the talk with Gov. Coppinger, and agreed to the settlement there, were of that description or not.

fidel countries which they had discovered, or should discover, in the western world; and, at that period, a title thus derived was received as sacred and undeniable throughout Christian Europe.

But Ferdinand, even at the moment of soliciting this grant from the Pope, insisted on a *better title*, that resting on *discovery*; and from that period, every nation of Europe, holding possessions in America, has maintained the principle, "that the *right of soil* followed, in the new world, the *fact* of discovery."—Rob. Am. 52, 102. 2 Ib. 208. 1 Irv. Col. 278 to 280. Johnson *vs.* McIntosh, 8 Wh. 543, &c.

In the laws of the Indies, this, with respect to the royal domain, is the pervading principle. About a century after the discovery of America, Philip II asserts, as a right well known and understood, that he had *fully* inherited the dominion of the Indies, and that *all lands* not granted out, either by himself or by the kings his predecessors, *belong to his patrimony* and royal Crown, *clear of any incumbrance.* Philip, on this occasion, so far from considering the Indians as having claim to these lands by virtue of original title, directs that they shall receive them for culture and grazing, the only purposes for which they were to hold them at all, by distribution from the Crown.—Wh. Comp. 41. 2 Recop. 42, lib. 4, tit. 12, law 14.

Philip again declares, in law 23, title 7th, of the same book, that when a settlement is undertaken, if the natives oppose it, they shall be given to understand that the intention in forming it is to civilize, and not to harm them; "to teach them to know God and his holy law, by which they are to be saved;" and that, if they still continue their opposition, the settlement shall be made *without their consent.*—2 Recop. 24. Wh. Comp. 37.

The law of Spain in this matter corresponds with the uniform practice of the Crown, and of its delegates in America. Where, in the history of Hispaniola, or of Cuba, of Mexico, or Peru, can a word be found to sustain the *original right* of the Indians to the *soil*, or even a hint that the title of the Crown was not perfect in itself, and wholly independent of the Indians?

The distributions by Columbus and Gasca; the granting of whole provinces by the Crown, without even naming the Indians; their degraded vassalage, for a long period universal in the pacificated districts; the contempt in which, as intellectual beings, they were held in the sixteenth century, requiring even a bull from the Pope to decide that they were *rational*, and producing, according to Robertson, from the Ecclesiastical Council of Lima, a decree, that from mental incapacity they ought to be excluded from the sacrament of the Eucharist; the whole system of repartimientos and encomiendas present together a mass of fact and of usages inconsistent with, and absolutely forbidding, the idea that a grant of lands belonging to the royal domain in the Indies is *void*, or even in any degree imperfect, by reason of any admitted original Indian title, boundary, or right of occupation.—2 Rob. Am. 230–1. Note 69.

But the question, as appears to me, has been distinctly pronounced upon by the highest judicial authority.* In the

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* *Grants of land within the supposed Indian boundary in East Florida, confirmed by the Land Commissioners and by act of Congress.*

Pedro Fornelles	175	Confirmed by Land Commissioners.	1824	1.23
Nicholas Estefanoply	2,500	Recommended by Land Comm'rs, and confirmed by Congress.	1825	2.10
James Hutchinson	2,000	Do....do....do...	825	2.02

case of Johnson *vs.* McIntosh, the Supreme Court recognise the principle and the practice, that, in the new world, "discovery gives exclusive title: "that, from the *ultimate dominion*, asserted by every State in Europe, having possessions in America, the claim resulted, and was exercised, *of granting*

Peter Fouchard	1,500	Confirmed by Land Commissioners	1824 (1st rep't)
Francis Ferreyra	Key Bacas	Recommended by Land Comm'rs, and confirmed by Congress	1828 15.13
Francis Richard	1,625	Confirmed by Land Commissioners	1828 1.40
Pablo Rosete	2,000	Recommended by Land Comm'rs, and confirmed by Congress	1824 (1st rep't)
Francis R. Sanchez	4,000	Do.....do.....do	1824 (1st rep't)
Joseph S. Sanchez	2,000	Confirmed by Land Commissioners	1824 (1st rep't)
Francis Medicis	2,000	Do.....do.....do	1828 1.64
Thomas de Aguilar	2,000	Recommended by Land Comm'rs, and confirmed by Congress	1824 2.2
Antonio Alvarez	1,500	Do.....do.....do	1828 15.8
Geo. J. F. Clarke	1,000	Do.....do.....do	1828 12.4
Charles W Clarke	4,000	Do.....do.....do	1828 12.8
Catalina Hijuelos	2,000	Do.....do.....do	1825 2.3
G. W. Perpall	660	Confirmed by Land Commissioners	1824 1.47
Miguel Marcos	5,500	Recommended by Land Comm'rs and confirmed by Congress	1825 3 2d 2

ST. AUGUSTINE, FLORIDA, *Oct'r* 26, 1830.

ANTONIO ALVAREZ,
K. of the P. A.

NOTE....By the several acts of Congress relating to private land claims in Florida, grants have been confirmed without discrimination, equally within and without the alleged Indian boundary; and, in the very grant in question, Arredondo may now take under these acts the league square. Thus, in addition to the highest judicial, is also presented the highest legislative authority, for saying the grant is not invalid, either on the ground of Indian boundary or Indian occupation.

the soil while *yet* in the *possession of the natives:* that our whole country (the United States) had been granted by England while in the occupation of the Indians—the grants purporting to convey the *soil,* as well as the right of dominion, to the grantees; and that these principles of *ultimate dominion,* of *exclusive title,* founded on discovery, with the *consequent power* of *granting the soil,* have been recognised and adopted by the Government of the United States, not only as respects former possessions, but also as to the more recent acquisitions of Louisiana and Florida."—8 Wheat. 574, 5, 9. 580, 4, 9.

The European powers, while they have asserted and exercised these rights as absolute, have not always, nor has the United States, disregarded the *occupation* of the aboriginal inhabitants. To it they have severally yielded greater or less consideration and kindness, according to their respective views and necessities, and as beneficent sentiments on this subject more or less prevailed; but never, I think I am justified in saying, has it been treated as narrowing the dominion, weakening the title, or invalidating the grant of the soil of any civilized State. From motives of humanity and policy, to preserve peace and harmony with the natives, not to perfect title, it has often been practised, to quiet this occupation by purchase, by gifts, or by persuasion; but more frequently, perhaps, it has been wholly set at naught, or overcome by force.

It may be asked, if the Indians have no title to the soil, if the lands may be granted while in their occupation, and a perfect title be transferred to the grantee, why is so much found in the Spanish laws on the subject of Indian possessions? The answer is presented at almost every page of the Recopilacion, where it treats of the control, of the protection, or of

the lands of the Indians. After the interposition and benevolent exertions of Las Casas in behalf of this oppressed race, the Emperor Charles, Philip II, and later kings, by their laws and ordinances, appear to have had it constantly in view to ameliorate their condition. For this purpose, it is never suggested that they are to be considered as original proprietors, or lords of the soil, but peace, forbearance, and gentleness are enjoined in their favor; they are to be instructed in civilization, and *persuaded* to become Christians; and lands are to be granted to them as they are granted to Spaniards, under the authority of the Crown, from the royal domain, *sufficient for their wants as cultivators of the soil* and *owners of cattle.* For such purposes only were they permitted to possess lands; and their actual occupations of this nature, not those of a wild and vagrant character, were, by the laws of the Indies, secured and confirmed to them, either as individual property, or as the common stock of the community, or inhabitants of a village.

Such is the landed property of the Indians, known to the laws of the Indies; and the rights growing out of it are the only rights contemplated by, or intended to be secured by, the formal clause, frequently found in Spanish grants, "without prejudice to the Indians." Such clause in their favor is precisely of the same character and legal import, as to them, as the equally usual clause, "without prejudice to third persons," is to landholders generally. These clauses are intended to save the rights of older grantees, whether Indians or white men, whose lands may lie within the limits of the new grant, but are never intended to invalidate the grant itself.

The grant to the Arredondos is subject to the general rule. If within its limits, older grants and rights to land, such as I

have described, shall be found, whether belonging to Indians or other persons, they will be entitled, under these clauses, and on general principles of law, to recognition and security; but the grant itself, as against Spain or the United States, would not in the least degree be invalidated by them.

If there be such *adverse* private claims falling within this grant, they are not now, by this court, to be decided or investigated. This is prohibited by the act of Congress giving the jurisdiction which the court is now exercising over land claims. The only legitimate question for decision at this time, without reference to private adverse claims, is, whether the grant be valid or not.

The court is of the opinion that the objection that the grant is void because within an Indian boundary, is not sustained, *either as to the fact or the law.*

The *third* and last objection, "that the conditions of the grant have not been performed, nor any valid excuse shown for their non-performance," must now be examined.

The grant, it is to be recollected, bears date the 22d day of December, 1817; and the condition to which it was subject is, "that the grantees establish on the tract two hundred Spanish families, at their own cost, the establishment to be commenced within three years from said date."

According to the terms of the condition, it was only the commencement of the establishment that was required within a limited period—its further progress and final completion, indeed every subsequent step after the first, being left by the grant without stipulation, to be governed, under the circumstances of the case, by the general principles of law and equity.

Whether the establishment was commenced within the three years or not, is a question of fact, the decision of which

must depend on the testimony exhibited. The testimony collected at different times, and from numerous persons, distinctly and satisfactorily establishes the following particulars and statement.

That, previously to the 22d day of December, 1820, exertions had been made and continued, by and under the Arredondos, in various directions, to "commence the settlement" at Alachua—*William Tudor Hall*, a subject of Spain, having entered into arrangements for that purpose in September, 1820; *Edward M. Wanton*, also a Spanish subject, and a native Floridian, on the 16th December; and *James Riz*, in November of the same year.

Peter Mitchel and *Horatio S. Dexter* had been already engaged, and were active in effecting the object.

Hall's undertaking was to become an *actual settler* on the tract, and to obtain for it as many other settlers as might be in his power. Pursuant to this obligation, he visited the grant without delay, and on his return engaged two persons to become settlers there with him. With these, having made the necessary preparations, he proceeded to Alachua, arriving with his party, and actually "commencing the establishment of the settlement" on the granted lands, on the 7th day of November, 1820.

The party at once began the clearing of the lands, and the erection of buildings, one for the under settlers, 20 feet by 15, and another, 30 by 20, as a dwelling-house and store for Hall himself. These two buildings were completed, after the fashion of a new settlement, in the January following.

Wanton, engaged as a settler on the 16th December, 1820, immediately commenced his preparations, and with his family became an *actual resident* on the premises in the succeeding April.

Riz, in November, 1820, stipulated to assist, under the direction of Mitchel, Hall, or Arredondo, generally in promoting the settlement, which, at the time, he understood was already actually commenced at Alachua. For this purpose, he brought with him from Savannah to Picolata, where he arrived on the 5th December, a small schooner boat, laden with goods to the value of $2,000, furnished by Mitchel for the use of the settlement. These goods were delivered to Wanton for that purpose; and Riz's subsequent duties consisted in forwarding supplies to Buffalo Bluff, on the St. John's, from whence they were to be sent to Alachua.

From the *commencement of the establishment, in November*, 1820, down to the latest period referred to in the testimony, the company concerned in the settlement had continued their exertions and contributions for its advancement. A dwelling-house for the agent, Haines, and a store-house for the reception of supplies, had been erected on the banks of the St. John's, at Vebrillia, (Buena Vista,) and from that point a practicable wagon road constructed, with nine bridges upon it, extending fifty miles from the river into the settlement—a road of great value, not merely to those interested in the grant, but to the country generally.

Three separate plantations or distinct settlements had been commenced, and several others contemplated; from twenty to forty houses completed or commenced; wells dug; timber for a grist mill prepared; the country stocked with cattle and horses; working oxen, slaves, and implements of husbandry provided; a physician, mechanics, and, altogether, about fifty persons, established on the grant.

This was the state of the settlement in 1823–'4, effected by the company upon a grant not confirmed by the United States, by means of great and continued exertions, and at an

expense, exclusive of what sub-grantees may have paid for their lands, that cannot be estimated, according to the testimony, at less than 30,000 dollars.—11 State Papers, doc. 156, pages 322–3–4, 349–50–2–5–6. *Vide*, also, the testimony recorded.

Thus the establishment is left by the proofs in 1823–'4; but it is a fact of geographical notoriety, and therefore to be considered by the court, that, since that period, the grant has been progressing in population, and settlements and plantations have been opened upon it in many places.

The court believes that the foregoing proof shows conclusively, that, within the period of three years from the date of the grant, the establishment was both substantially and literally commenced, according to the fair import and meaning of the condition. It is unnecessary, then, to enter upon a critical discussion of the legal effect of the extension of the original limit to the 22d December, 1821, granted, for reasons set forth, in 1820, by the Superintendent General.—11 State Papers, doc. 156, pages 319-20.

It is sufficient to say, that such extension is in accordance with the spirit, and with the express provisions of the laws of the Indies,* as it also is with the 8th article of the late treaty "between the United States and the King of Spain;" that it was justly warranted by the state of the province, comparatively quiet in 1817, but disturbed as it afterwards was, in 1818, by the irruption of the troops of the United States;

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* By the 93d ordinance of Philip II, law 25, tit. 7, lib. 4, of the Recopilacion, it is ordered, "that, in case any fortuitous circumstance should prevent the completion of the settlement within the time prescribed in the agreement, the settlers shall not forfeit what they have expended or built, nor incur the penalty; and the Governor of the district *may extend* the *term*, *according* to the *circumstances of the case*.—2 Recop. 24. Wh. Comp. 38.

and that it would, in the opinion of the court, have furnished a legal and equitable justification to the claimants *for delay in commencing the establishment,* at least down to the close of the added year.

As to the further progress of the settlement after the commencement of the establishment in November, 1820, the summary already given from the testimony shows what the claimants have done—more, it appears to me, if they were bound to do any thing, than, under the circumstances, could reasonably have been required of them. It was already a political certainty, that the province, by virtue of the treaty, must shortly pass under the dominion of the United States. From 1818, when it was invaded from the west by the troops of General Jackson, and at the east by those of Brigadier Gaines, all interests had become unsettled and uncertain in it; all enterprise, all undertakings, in truth, were suspended, waiting the issue of the treaty.

How, then, in this condition of the province—a condition founded in the weakness and imbecility, or caused by the acts of the Spanish Government, not occasioned by any default of the claimants, nor existing in 1817, when they entered into their engagement, could a Spanish settlement be prosecuted and advanced? With the recollection of the American troops at the east; with the *patriots* of Georgia looking in upon them from across the St. Mary's; with the Indians affrighted, and roaming over the country in every direction; and, above all, with the dread of Jackson from the west; a Spanish population could not, by any ordinary means, have been drawn into the Alachua. Nothing, under such circumstances, as to the stipulated condition, in law or equity, could have been claimed from the grantees.

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But, on the 10th of July, 1821, the province passed from the dominion of the Spanish Crown, and, by formal and actual surrendry, became a part of the United States.

From that period, all obligation to make further exertions to procure the settlement of Spanish families on the lands granted, was, by the act of the Spanish Crown, and by the joint or cotemporaneous act of the American Government, absolutely vacated. Such, after the maturest reflection, and the most careful examination that I have been capable of bestowing on the subject, is the conclusion adopted—a conclusion sustained by the nature of the case, and by the law and equity connected with it.

The stipulation to establish the two hundred Spanish families upon the lands granted was solely to promote the interest of the Spanish Crown. It was a duty and a service to be rendered, exclusively, unto Spain. It was the establishment of a Spanish settlement, on Spanish ground, under a Spanish jurisdiction, to aid and give strength to the Spanish Provincial Government in East Florida; and this could only be done, according to the terms of the condition, upon the soil of the Alachua grant.

But Spain herself had renounced its performance, and originated a state of things incompatible with it, by renouncing the country where the lands lie. She had transferred it to the United States; the grant was no longer within the jurisdiction of Spain; and no longer, in strictness, could a *Spanish* settlement be formed upon it. Wherefore, then, or how, can it be claimed for the United States, that this foregone, renounced, useless, and impracticable obligation should have been, or shall now be performed, or the grant, in default thereof, be taken as null and void.

In the opinion of the court, the grantees, both at law and in equity, have, by the transfer of the province, been absolved and exonerated from the obligation of the condition; and the condition itself, by the same act, the act of the grantor, has been rendered impracticable and void.

In the circuit court of the United States for the district of Vermont, a case was presented, in the particular wherein I shall cite the decision, bearing close analogy to the present. There, upon a grant by Governor Wentworth, of the British colony of New Hampshire, *conditioned* that a certain rent or sum of money should annually be paid at the *King's council chamber* in *Portsmouth*, it was decided, that, since the revolution, as there can be no *King's council chamber* in Portsmouth, *the condition had become impracticable by the act of the grantor, and therefore void.*—1 Paine's Rep. 658.

In the cited case, it was suggested, that, perhaps, the payment might have been required at a *different place;* not so as to the Alachua grant: here, the condition was to be performed on the lands granted; and that being rendered impracticable by the act of the grantor, could not in its nature be performed, or in law be required to be performed, in a different place.

The opinion, that the condition of the Alachua grant was discharged by the transfer of the province, is sustained, not alone by the decisions of the American courts, but by the plain and familiar principles both of the common and civil law.

Whenever a condition or obligation becomes impracticable by reason of the act of God, of the law, or of the party for whose benefit the condition or obligation was stipulated, it shall in law, as to the rights of the opposite party, be taken

as if the obligation or condition had actually been performed; and where an estate rests upon it, the estate shall at once become absolute.

The same is the rule where the performance has been *hindered* or *obstructed* by the party in whose favor, or for whose benefit, it was stipulated.—Domat. on Civil Law, 47, 8. Co. Litt. lib. 3. ch. 5, sec. 334. *Note* 100, also, pages 206*a*.; 206*b*. 2 Blackst. 256. 2 Peters' Rep. 102.

On the subject of the performance of this condition, it has been urged upon the court that the grantees of the Alachua grant ought not, perhaps, to be considered within the saving provision of the 8th article of the Spanish treaty; because, according to the terms thereof, that provision includes only "*owners in possession of their lands,*" and not those having merely the *right of property*, without the *actual* possession. "But owners in possession of their lands," are the words quoted, upon which the argument is founded, and these are the express words of the article *on the English side.* But in the opposite *Spanish* copy, they are not found. There, the words are "*pero los propietarios;*" *but the owners,* (not a word of *owners in possession of their lands,*) who, by reason of the recent circumstances, &c. This discrepancy is noticed now, not because, in the opinion of the court, it can have any decided bearing on the present question, the grantees being considered not only as having been in possession, but, for the reasons already stated, as absolved from the condition of settlement, but that it may not escape attention in future cases of land claims, wherein, possibly, it may be important.

In the same article, it should be mentioned, there is a still further variance between the English and the Spanish copies. On the English side, it is stipulated that all the grants of land

made before the 24th of January, 1818, by his Catholic Majesty, or by his lawful authorities in the said territories, ceded by his Majesty to the United States, "shall be *ratified* and *confirmed* to the persons in possession of the lands, *to the same extent that the same grants would be valid* if the territories had remained under the dominion of his Catholic Majesty." In the Spanish copy, the reading is, that all grants "*quedaran,*" *shall remain ratified* and *acknowledged* to the persons in possession of them, in the same manner "*they would be so,*" "*lo scrian,*" if his Majesty had continued in the dominion of these territories. The English text requiring, according to the distinctions taken by the Supreme Court in the case of Foster and Elam *vs.* Neilson, some legislative interposition and enactment, that the *executory* engagement contained in the article may be carried into effect, and the grants be ratified and confirmed. But, on the other hand, according to the plain import of the article, if the Spanish text be regarded, the treaty acts directly on the subject matter, and the grants thereby *are* and *shall remain ratified and acknowledged,* just as they would have remained if the province had continued in possession of Spain; the engagement or obligation assumed, being not *executory* but *executed,* and leaving to the United States nothing to be done under it, but to distinguish between its own possessions and those of the inhabitants of Florida, ratified and confirmed to them by the terms of the treaty itself.—See 8th article of the treaty. See, also, the case of Foster and Elam *vs.* Neilson—2 Pet. 314.

On the present occasion it is not necessary to determine by which of the two copies we are to be governed, if in any question that arise, a different rule of decision, viewing them separately, should be presented, or whether the true meaning

of the parties is not to be collected from the nature of the stipulation, and from the two copies taken together, and carefully compared with each other, rather than from either one of them separately considered.

The court has now concluded its examination of the several objections stated in the commencement of this inquiry. The duty has been of an arduous and difficult nature. It has not been prosecuted without great anxiety to avoid, or without equal apprehension that error might be committed. The subject, in most of its relations, was new to our courts: it depended on the laws and customs of Spain, and the regulations and ordinances of her kings, to be ascertained, chiefly, through the medium of a foreign language. Under such circumstances, I believed it would be expected, and I deemed it proper, that my views should have been given at length, without dread of tediousness or prolixity. But I may now dismiss the subject, after a brief notice of a few topics and propositions, presented to the consideration of the court, but overlooked at their proper place, or which did not naturally fall within the previous divisions of the inquiry.

It has virtually been made a point—I will not say it has been insisted on to the court—that where a claimant exhibits his grant, *genuine* in every *documentary* respect, and *formally* made and executed by a known public officer, "*a legitimate authority*" of the Crown, that still his claim shall be adjudged against him, unless he produce the law or ordinance which authorized the grant to be made.

It has also been suggested, that the American Government has a *right to say*, in deciding upon land claims in Florida, whatever Spain *could* have said; and on that ground to reject the claim, without regarding what she probably or *possibly would have said;* and the court, to sustain the positions, has

been referred to the report of the Commissioners of Land Claims in West Florida.—7 vol. 2 part, Executive Papers, doc. 111, page 13. Clarke's Land Laws, 1046.

It appears to me that neither of these propositions can be successfully maintained. Without the slightest disrespect, I cannot but think they have been advanced without due consideration. The first leads necessarily to this result, that, in *proportion to our ignorance*, will be the *probability* or *certainty* of the *rejection* of a *claim.*

A grant is presented, emanating from a legitimate authority, authenticated by great formality of execution, and by the public manner in which it was made, sanctioned also by the approbation of other public functionaries, the Promoter Fiscal for instance, whose official duty it was to act in this matter, and, according to law and the rights of the Crown, to give or withhold his approbation; yet, in such cases, according to the rule suggested, unless the claimant could point to or produce the law or ordinance in virtue of which it was made, the court, for *want of information,* will be authorized to reject it.

It is confidently believed that such is not the rule demanded by impartial justice; but, on the other hand, that a grant thus presented carries with it strong *prima facie* evidence of validity, and that it must in some way be impeached, and the presumption in its favor be removed, or it becomes the duty of those appointed to pronounce upon it to declare it to be valid, and, according to the general principle of the common law, to consider those in possession as *rightfully* possessed, until *something* be shown to the contrary.

True, this presumption may be rebutted by showing that the grant was in *opposition* to the known policy, to any specific law, or to the character and spirit of the laws of the

State generally. It would be obviated, if it appeared that the authority by whom it was made was not charged with the royal domain, or accustomed to grant the public lands. So, too, it would be removed, if the grant itself, in its *documentary* character, exhibited a want of genuineness or verity.

As the first rule stated would make ignorance, or want of information, a principle on which a grant *may* be rejected, so the second asserts for the United States the *right* to *say* that *all* claims shall be set aside, because Spain, in the exercise of despotic power, *could have said it.*

The statement of the proposition, in the extent to which it might carry us, is sufficient to show that it is unsound and erroneous.

That I am not wrong as to the power of Spain, or rather as to that of her kings, let the late treaty ceding the Floridas, the basis of all the proceedings before this court, be examined. Witness there its exercise by Ferdinand, at the instance of the American Government, in vacating the grants of Alagon, Vargas, and Punon Rostro. Look, also, to the general history of the Spanish monarchy. Many centuries have elapsed since the ancient coronation formula was observed; since, on the peninsula of Europe, the spirit that produced it has been shrouded in despotism; since, at the coronation of a Spanish king, the minister of the people, in their behalf, could say, as the rule of their allegiance, and the condition of his authority, that "we, who are your equals, make you our sovereign, and will obey and sustain your Government while you maintain our rights and liberties, *but no longer.*"—1 Russel's Mod. Eu. 171.

On the contrary, the Emperor Charles dissipated the last remnant of the power of the people, and of the national Cortes, in 1539; and no historical truth is now more familiar than that of the unlimited and absolute power of the Spanish Crown.—2 Russell's Mod. Eu. 170.

To assert, then, that the American Government, that our courts of justice, have a right to say what the Crown of Spain *could* have said as to land titles, is no less than to affirm that we have a *right* to reject and *vacate any and every Spanish grant*. The proper inquiry with respect to these land claims, is not what Spain *could* have done in the plenitude of unrestrained power, but what she *probably would* have done, in the exercise of good faith to her subjects, and in the conscientious and impartial administration of justice.

In deciding on the claim submitted, I endeavor constantly to keep this object in view. It may not be susceptible of certainty; but I think the evidences as to what the Spanish Government would have said as to this grant, had the dominion of the province remained unchanged—the evidences in its favor, when all the sources of information are considered—are such as approach nearly to demonstration, such as ought to be received as satisfactory and conclusive by a court of justice.

In pronouncing this opinion, I take into view that the Spanish treaty cedes no private property to the United States, but guaranties it, with great care, to the owners thereof; that the meliorated law of nations affords the same rule, and will not permit, even in a conquered country, private possessions to be disregarded.—Vattel, lib. 3, ch. 13, sec. 200.

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That this guaranty of the law of nations, this stipulation of the treaty, securing to the inhabitants of the ceded territory their possessions and property, clearly belongs to the class of things called "*favorable*," and calls for a liberal interpretation, on all doubtful points, in their behalf.—Grotius, lib. 2, ch. 16, s. 10, p. 148. Vattel, lib. 2, ch. 17, s. 300, 1, 2, 3, 10.

That the treaty itself, in the 8th article, expressly declares that all grants made before the 24th January, 1818, by the "lawful authorities" of his Catholic Majesty, in the ceded territories, shall be ratified and confirmed; thus admitting the principle that the *authorities of the province* possessed the power of granting the public lands.

That the same principle is again asserted by the King, in his ratification of the treaty on the 24th October, 1820, and acceded to by the American Government, in its counter ratification, wherein he speaks of the confirmation of the grants of lands made before the 24th January, 1818, either by himself, or by his *competent authorities in his royal name*, as of a matter understood, and by the 8th article meant and stipulated to be done.

That the "competent authorities," and the only authorities, with a single exception, under the regency of the Cortes, who granted lands in East Florida, at any time, in the name of the King, were the Governors of the province and the Intendant of Cuba—a fact from its nature necessarily known to the King—and that, therefore, his declaration on this occasion, accepted by the American Government, in its legal import and true meaning, was the same, being but another mode of expression, as if he had asserted that the confirmation of grants made by the Governors, or by the Intendant, in his

royal name, was an obligation under the treaty, intended and stipulated.*

That all witnesses in this province, and, so far as is known, elsewhere, before the various Boards of Land Commissioners,

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* The particular language of the treaty, as to the ratification of grants, is entitled to further consideration. *Lawful* authorities, *legitimate* authorities, *competent* authorities, are the expressions used; and grants by these authorities are coupled with and to be confirmed without distinction, like the grants from the King. No discrimination is made, no different terms used, in regard to them.

It would seem, then, that the object of one inquiry was accomplished in ascertaining these authorities, whose powers are thus indicated in the treaty as general or discretionary, and whose grants are to be confirmed, or, agreeably to the Spanish text, to "remain ratified and acknowledged."

No where does the treaty speak of grants made by the competent or legitimate authorities as being entitled to confirmation, *provided* they do not exceed a given quantity, *provided* they were lawful and authorized grants, *provided* they were made *within the limits* or scope of powers previously given. If they were made by legitimate or competent authorities, the condition of the treaty, assuming that their powers were general, is fulfilled.

If a different inquiry had been contemplated—if the authorities are not to be admitted as competent, till, after investigation in each particular case, it is found that they possessed the specific powers exercised therein, it should have been—it naturally would have been—*expressed* by the parties to the contract, by whom the *general* power should not then have been conceded.

I do not forget, that, by the 8th article of the treaty, it is declared, in the English copy, that all grants "made by his Catholic Majesty, or by his lawful authorities, shall be ratified and confirmed to the persons in possession of the lands, to the *same extent* that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty." But, on the other side, in the Spanish text I see that it is stipulated in clear and unequivocal phrase, "that all grants of land made by his Catholic Majesty, or by *his legitimate authorities*, before the 24th day of January, 1818, in the said territories which his Majesty cedes to the United States, shall remain ratified and acknowledged to the persons who may be in possession of them, in the same manner that they would so remain if his Majesty had continued in the dominion of these territories."

Nothing is said as to their confirmation to the "*same extent:*" the language is absolute and unconditional—they shall remain ratified and acknowledged in the *same manner*, or *as* they would have done "*quedaran ratificadas y reconocidas del mismo modo que lo serian,*" if his Majesty had continued in the dominion of these territories.

testify that they have always understood and believed that the provincial authorities of Spanish America, within their several governments or districts, were vested with power to grant the public lands in full property and absolute title; and that such grants, even if they should be deemed indiscreet by the Crown, would not be disaffirmed and rescinded. Clarke's Land Laws, 1039–40–1. See, also, the testimony of Clarke, Hernandez, and Bethune.

That the agent of the United States, conversant with the Spanish language, who compiled, under the authority of Government, a volume of Spanish laws, ordinances, and regulations, for our use and information on this particular subject, declares, in his report to the State Department, that he has assiduously sought, but has been unable to discover that any grant or concession made by a Captain General, Intendant, or Governor, has, in any instance, been disapproved of by the King. —Wh. Comp. 9, 10.

That the several learned counsel for the United States, who have opposed this grant with great zeal, do not even suggest that such a case exists.

That the mild and beneficent spirit of the laws of the Indies (for thus, in respect to the sentiments and provisions contained in them, they may truly be characterised) exhibits a constant watchfulness to protect the Spanish landholder in America, and to preserve to him his possessions, even where his title might be avoided.—Wh. Comp. 38, 42, 50–1–2–3. 3 Recop. 24, 43, lib. 4, tit. 7, law 25, and tit. 12, law 15.

That the provincial authorities in Spanish America are not, like those of the United States, created by statute, and limited by fixed and written rules, but, within their several districts, represent the majesty of kingly power unlimited and despotic. That their authority, so far as it locally extends, is

general and discretionary, and over matters belonging to their jurisdiction, even like that of the Crown throughout the whole kingdom; and that, therefore, though strictly accountable to their master, the king, for the faithful and discreet administration of their respective Governments, it does not comport with the dignity of the Crown, nor is it in accordance with its accustomed policy, to set aside grants, or disavow favors conferred by such authorities, in its royal name.—2 Rob. Am. 209.

That, in these land cases, it is supposed to be the desire of the United States, while the claims are to be carefully scrutinised, to guard against fraud, that no claimant shall be deprived of his just possessions and property, and that to vacate grants by the adoption of a rigid or inequitable rule, would be consonant, neither with the pledged faith of the treaty, nor with the just intentions of government.

For all these reasons, as well as for those previously set forth in the examination of this case, the court is of opinion that the grant herein submitted *is valid*, and that, in law and in equity, it ought to be, and, under the late "treaty of amity, settlement, and limits, between the United States of America and the King of Spain," ratified by the President of the United States on the 22d February, 1821, and under the act of the first session of the twentieth Congress of the United States, approved the 23d May, 1828, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and by virtue thereof, *it is hereby* confirmed and decreed unto the claimants, according to law, discharged from the condition of settlement, and saving, as in the grant is expressed, the rights of third persons, whether white men or Indians, having lands *by previous title from the Crown*, within the limits thereof.

That it be, and is hereby, confirmed and decreed as aforesaid unto the said claimants, in a square tract, containing

289,645⅝ acres of English measurement, the centre thereof being the known spot, monument, or marked tree, at or near the house at present the dwelling of Edward M. Wanton; said spot, monument, or marked tree, to be ascertained by the surveyor, who, under the law, shall survey the said tract.

Let the Clerk enter up this decree in due form, and present the record to the court for its signature. St. Augustine, East Florida, 1st November, 1830.

A list of Governors of the Province of East Florida, from its retrocession, in 1784, *by Great Britain to Spain, till its transfer to the United States, on the* 10*th July*, 1821.

I, *Antonio Alvarez*, Keeper of the Public Archives of East Florida, duly qualified, and commissioned by the President of the United States of America, do hereby certify, that, on examination of the documents in my office, it appears that the following named persons have acted as civil and military Governors of the then province of East Florida, between the years 1784 and 1821, to wit:

Vincente Manuel de Zespedez, from July 12, 1784, until July, 1790.

John Nepomuceno de Quesada, from July, 1790, until March 1796.

Bartolome Morales, from March, 1796, until June, 1796, *ad interim.*

Enrique White, from June, 1796, until March, 1811.

Juan Jose de Estrada, from March, 1811, until June, 1811, *ad interim.*

Sebastian Kindelan, from June, 1812, until June, 1815.

Juan Jose de Estrada, from June, 1815, until January, 1816, *ad interim.*

Jose Coppinger, from January, 1816, until 10th July, 1821.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, at the city of St. Augustine, this second day of December, in the year of our Lord one thousand eight hundred and twenty-nine.

ANTONIO ALVAREZ,

[L. S.] *Keeper of the Public Archives.*

NOTE.—Governors ad interim were not commissioned by the King. The Intendant Ramirez was commissioned 5th October, 1815.

A list of the Kings of Spain from the discovery of America, in 1492, *to the present year,* 1830.

FERDINAND V, of Arragon. ISABELLA, of Castile.	Expelled the Moors, & established the Inquisition, and by the Pope surnamed Catholic.	Came to the throne A. D. 1479.	Ferdin'd died A. D. 1516. Isabella died 1504.	
CHARLES I.	Of the house of Austria, son of Maximilian, grandson of Ferdinand, elected Emperor of Germany in 1519.	do	1516,	abdicated 1555.
PHILIP II.	Son of Charles I.	do	1555,	died 1598.
PHILIP III.	Son of Philip II.	do	1598,	died 1621.
PHILIP IV.	Son of Philip III.	do	1621,	died 1665.
CHARLES II.	Son of Philip IV, an infant at his accession—*Anna Maria of Austria,* Queen Regent.	do	1665,	died 1701.
PHILIP V.	A Bourbon, grandson of Louis XIV, and Duke of Anjou, received the crown of Spain under the will of Charles II.	do	1701,	died 1746.
FERDINAND VI.	Son of Philip V.	do	1746,	died 1759.
CHARLES III.	Brother of Ferdinand VI.	do	1759,	died 1788.
CHARLES IV.	Son of Charles III.	do	1788,	abdicated at Bayonne, 1808.
FERDINAND VII.	Son of Charles IV, detained in France till 1814; the government discharged in the interim by Joseph Buonapare, or by the National Cortes. Ferdinand returned to Spain in May, 1814.	do	1814,	still king 1830.

NOTE.—The foregoing statement, showing the succession of the several Governors of the Spanish province of East Florida, and the dates of their accession to authority, is necessary to the convenient examination of the validity of Spanish grants therein. That of the accession and demise or abdication of the Kings of Spain, is particularly so. The several partial translations of the laws of the Indies, and of the ordinances and regulations of the Crown, published by authority of the United States, seldom exhibit their chronology, or present the means of ascertaining it, or the reign in which they originated—questions often materially connected with the import and just construction of the law itself.

For these reasons, and for future use, they are filed with the opinion of the court—the dates of the first being officially certified and those of the latter ascertained from authentic historical records, except as to the precise period of the abdication of Charles IV, and the actual accession to the throne, in Spain, of Ferdinand VII; but it is believed that the dates in these particulars are correctly given.

DECREE.

November 1, 1830.

FERNANDO DE LA MAZA ARREDONDO AND OTHERS, *vs.* THE UNITED STATES OF AMERICA. } *Land claim.*

Whereas, Fernando de la Maza Arredondo and Son, Peter Mitchel, Moses E. Levy, Jasper Ward, William Thorn, Alexander M. Muir, and Noah Jarvis, the three last named persons for themselves, and in trust for the "Florida Association of New-York," Nathaniel Wells, Elisha Huntington,

Ichabod Prall, Nehemiah Brush, Isaac Marquard, and Jeromus Johnson, did, in pursuance of the act of the Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and approved the 23d day of May, 1828, on the eleventh day of November, 1828, file their petition for the confirmation of certain lands therein mentioned in the Clerk's office of the Superior Court for the Eastern District of Florida; and *whereas* the Attorney of the United States did duly appear and answer said petition, and such proceeding being had herein as that this claim was submitted to the court for its decree thereon; and the said court having examined the claims of the said petitioners, and having heard the testimony and arguments of counsel on both sides, and having maturely considered the same, this day passed the decree which follows, to wit:

"The court is of opinion that the claim is *valid*, and that, "in law and equity, it ought to be confirmed; and, under the "late 'treaty of amity, settlement, and limits, between the "United States of America and the King of Spain,' ratified by "the President of the United States on the 22d February, "1821, and under the act of the first session of the twentieth "Congress of the United States, approved 23d May, 1828, "entitled 'An act supplementary to the several acts providing "for the settlement and confirmation of private land claims in "Florida,' and by virtue thereof, it is hereby confirmed, ad-"judged, and decreed unto the said claimants, according to "law, discharged from the condition of settlement, and saving, "as in the grant is expressed, the rights of third persons, "whether white men or Indians, having lands by *previous* "*title from the Crown*, within the limits thereof."

"That it be, and is hereby, confirmed, adjudged, and de-

"creed as aforesaid, unto the said claimants, in a square tract "containing two hundred and eighty-nine thousand six hun- "dred and forty-five and five-seventh acres of English mea- "surement, the centre thereof being the known *spot*, monu- "ment, or marked tree, at or near the house at present the "dwelling of Edward M. Wanton; said *spot*, monument, or "marked tree, to be ascertained by the surveyor who, under "the law, shall survey the said tract.

"JOSEPH L. SMITH."

And afterwards, before the same court, at the same term of November, A. D. 1830, to wit, on Saturday the twelfth day of said term, and the thirteenth of said month, the following entry of record was made in said cause, to wit:

Saturday, November 13, 1830.

FERNANDO DE LA MAZA ARREDONDO AND OTHERS, *vs.* THE UNITED STATES OF AMERICA. } *Land claim.*

The above cause having been decided against the United States at the present term of this court, and it being desirable, as well to the United States, as to the parties complainant, that the appeal to the Supreme Court of the United States, directed by law, be taken as early as possible, and in time for the approaching term of said court; and as the law directs an appeal in all cases decided against the United States, where the quantity of land claimed is above the amount contained in a league square; and whereas the law seems to contemplate an order from the Attorney General to the District Attorney, directing the appeal.

For the purpose of facilitating as much as possible a final decision in this cause, it is hereby agreed by the counsel for the claimants that no advantage will be taken, or attempted to be taken, of an appeal prayed on behalf of the United States in said cause at this term, or to the time, mode, or manner of said appeal: but the said appeal shall in every respect be held and considered as good and valid in law, as it would have been had the provisions of an act, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," approved 23d May, 1828, been in every respect observed and pursued. It is further agreed, that the foregoing shall be entered of record, and made an order of court.

The attorney for the said United States prayed an appeal from the decision of this court in this cause to the Supreme Court of the United States, which is granted accordingly.

SUPERIOR COURT,
District of East Florida, } *to wit.*

I, George Gibbs, Clerk of the said court for the district aforesaid, do hereby certify that the foregoing three hundred and thirty-two pages contain a full, true, and complete transcript of the record and proceedings had in the case therein named.

In witness whereof, I have hereto subscribed my name, this fourth day of December, A. D. 1830, and of the independence of the United States the fifty-fifth.

GEORGE GIBBS, *Clerk.*

625.

By the Honorable Joseph L. Smith, Judge of the Superior
[L. s.] Court for the District of East Florida.

To all to whom these presents shall come, be seen, or made known, greeting: Know ye, that George Gibbs, who hath signed the foregoing attestation, is Clerk of the Superior Court for the District of East Florida; that all due faith and credit is and ought to be given to his acts as such, and that the foregoing attestation is in due form of law.

In testimony whereof, I have hereunto set my hand, and caused the seal of the said court to be hereunto affixed, this 4th day of December, A. D. 1830, and of the independence of the United States the fifty-fifth.

JOSEPH L. SMITH.